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A HISTORY OF CANON LAW

IN CONJUNCTION WITH

OTHER BRANCHES OF JURISPRUDENCE.

A HISTORY OF CANON LAW

IN CONJUNCTION WITH

OTHER BRANCHES OF JURISPRUDENCE:

WITH CHAPTERS ON

THE ROYAL SUPREMACY

AND THE

REPORT OF THE COMMISSION ON ECCLESIASTICAL COURTS.

BY THE

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FORMERLY RECTOR OF HAMPTON POYLE, OXON;
AUTHOR OF "SERMONS ON COMMON THINGS;"
"THE VALUE OF HUMAN LIFE, OR THE HISTORY OF OUR HOSPITALS IN CONNECTION WITH THE CHURCH;"
"CONSECRATION, OR A PLEA FOR THE DEAD," &c.

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"Non, mehercules, jejuna esse et arida volo, quæ de rebus tam magnis dicentur."—*Senec. Ep.*, 75, t. ii. p. 212.

"Sciant Sacerdotes Scripturas sanctas, et canones, ut omne opus eorum in doctrinâ, et in prædicatione consistat, atque ædificent cunctos tam fidei scientiâ, quàm operum disciplinâ."—*Synod. Tolet.*, Can. xxiii.

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To the Memory of the Right Reverend

BISHOPS RIDLEY, ANDREWES, AND STILLINGFLEET,

MEN OF HIGH REPUTE, AND JUSTLY SO, FOR THEIR

LEGAL-ECCLESIASTICAL LEARNING,

WHO, WHILST OF DIFFERENT SCHOOLS OF THOUGHT IN

THE CHURCH OF ENGLAND,

DID THEIR BEST, EACH IN HIS OWN DAY,

TO ENCOURAGE CHURCHMEN IN THE STUDY OF

AN IMPORTANT BRANCH OF PROFESSIONAL KNOWLEDGE,

ARE THE FOLLOWING PAGES DEDICATED,

WITH DEEP RESPECT.

PREFACE.

IT will not be necessary to trouble the reader with any lengthened Preface. The book must be left to speak for itself, in the wide range of historical matter which it attempts to embrace. One thing I regret in connection with the same, is that, when asked by a deceased brother, some years ago, to work out the various topics of such an inquiry, my answer should have been, that "it was enough for one member of a family to grapple with so complicated and hopeless a subject."

It would have been wiser to have sought, there and then, his able co-operation, in order that a better and more useful Treatise might have been the result; since, as affection constrains me to add, bought experience as well as study had given *him* a more intimate and practical insight into the whole question, as it affects both the Church and Clergy.

I have received assistance from many Friends, amongst whom I ought to mention the Rev. C. N. Robarts, Rev. A. Mayhew, Rev. H. Deane, and my own son, J. Theodore Dodd, Esq., of Lincoln's Inn; to all of whom I beg here to tender my best thanks.

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CHAPTER I.

INTRODUCTORY.

"He that giveth his mind to the law of the Most High, and is occupied in the meditation thereof, will seek out the wisdom of all the ancient," &c.—*Ecclesiasticus* xxxix. 1.

THIS work is an attempt to handle a difficult and complicated subject, in the present condition of our Ecclesiastical Law. But, happily, the smallest contribution in this department of professional knowledge (the term "Ecclesiastical" is used in its widest sense as affecting both Clergy and Laity) may be of service, if only it should induce *others*, with more learning and a long life before them, to accomplish the object in view. There are, however, on the other hand, many considerations to deter an inquirer from making such an attempt. It may be said, that the investigation comes too late, the fault being with preceding generations, when, three centuries ago, with so many things settled, so many crying abuses eradicated, and so many improvements recalled into existence which had been suffered to remain dormant, the one exception was the legacy of an unsatisfactory state of our Ecclesiastical Law. Or again, it may be alleged, we have so long gone on in an easy hap-hazard kind of manner, thinking that the *Church of God*, in the midst of her difficulties, will be sure, in the long run, to right herself—that her condition *now* is not so very different from what it has often been, sometimes with days of sunshine, but sometimes with warnings of an opposite kind, from within and from without[a]. And so it has happened, human confidence, in

Importance of Ecclesiastical Law.

[a] The following was the language used so lately as the year 1853, when the prospects of the Church seemed to some not very reassuring: "There was in all this enough to appal the stoutest hearts; and those who can recall the feelings of those days will at once remember the deep depression into

a measure, has remained the same, that, after all, there is, at the helm of the good ship, *One*, ever watchful, who has given, even in the days of old, an *inviolable* promise, that "no weapon formed against thee shall prosper;" which promise comes out still more distinctly in the New Economy, given expressly by our Lord Himself, "That the gates of hell shall not prevail against it." But there are difficulties inherent in the subject itself. For if when speaking of Law in general, difficulties appear such as in ordinary times would deter many from attempting to grapple with them, those said difficulties become still greater which touch upon our Laws Ecclesiastical.

Lord Melbourne on the profession of the Law in general.

A statesman of great authority in his own day [b] has laid down an important dictum as always applicable under all conditions of Law, and therefore applicable to the Ecclesiastical class, to which no doubt he would have referred, if such had been deemed important enough to help the purport of his argument. In a speech in the House of Lords, on the Canada Government Declaratory Bill, Lord Melbourne is reported to have said: "My opinion is, let a man's understanding be as bright as it may, let a man's genius be what it may, that profession (i.e. the profession of the Law) does little else *than cramp the understanding*, and *fetter the mental faculties*, and that *almost universally*." In common justice, however, it is right to add, that an orator, in the heat of debate, will sometimes give utterance to sentiments, which, when subjected to re-consideration, he will be the first to repudiate. But if not so, it is easy enough to find an opinion the very reverse of the foregoing, be it the estimate of Law in the abstract, or be it some particular branches of Law which affect our relation-

which the Church had fallen, and the gloomy forebodings which were universally prevalent. But in these hours of darkness there were hearts, many hearts, burning with shame and grief for the general apostasy around them—hearts which were yet beating high at the thought, that, amidst the universal shipwreck and treason, there was *One* whose protection might be relied on," &c.—*Narrative of events connected with the publication of the "Tracts for the Times,"* by Rev. W. Palmer, Worcester College, Oxford.

[b] In the second year of Queen Victoria's reign.

ship to each other, should one trace the same backward to first principles, exhibiting them through the various stages they may have undergone, as one nation after another borrowed the germ in its earliest results, and developed it,—so building up their respective systems, as experience, or national civilization, enlightened them.

In speaking of communities, however, growing up from the individuals which first gave them birth, we do not unfrequently borrow an illustration from the Human Body, as though, in some sense, each one of us carried, in ourselves, a representation of what we personally form a part. And that however true is the individuality, yet the members of each body are distinct and many, but all working together towards the same common end, and to the benefit of the whole!

Lord Bacon on Law and the Royal Prerogative.

Now this very same idea, a great statesman and philosopher of our own (for Lord Bacon combined in himself both these qualifications) borrows and applies to the existence and practical development of Law, which, undoubtedly, forms one great instrument for keeping these communities together. "Neither can be suffered to stagnate with impunity," says Lord Bacon, "whether it be the *natural* body, or the *body politic*" of which we are speaking. As a proof of the influence of Law[c] *inter magnalia regni*, he goes on to say, "The Law is the highest inheritance that the king hath; for by the Law both the king and all his subjects are ruled and directed." And still more forcibly, to borrow the expressive quaintness of the day, "The Law is the great organ by which the sovereign power doth move, and may be truly compared to the sinews in the natural body, as the

[c] Lord Bacon very sagaciously remarks: "It is a defect even in the best writers of History, that they do not often enough summarily set down the most remarkable laws that passed in the times whereof they write, being indeed the principal acts of peace. For though they may be had in the original books of laws themselves, yet that informeth not the judgment of King's Counsellors and persons of estate so well as to see them described, and entered in the title and portrait of the times."—*Life of Hen. VII.*, p. 46.

sovereignty may be compared to the spirits[d], for if the sinews be without the spirits, they are dead and without motion. If the spirits move in weak sinews, it causeth trembling, so the Laws without the king's power are dead; and the king's power, unless the Law be *corroborated*, will never move constantly, but be full of staggering and trepidation[e]." But then "the Law towards the king himself hath a double office or operation." The first is, to intitle or design him, i.e. as Bracton hath well said[f], "The Law maketh that the king himself exists as a king." Whence flows the axiom, "Non regna propter reges, sed reges propter regna."

The Law Divine.

But the existence and influence do not end here. For as far as we have proceeded in our inquiry, it is only of *human* law we have spoken, and that in such a way as a mere heathen might speak. Indeed, the latter could carry our thoughts still higher, as we shall see in the course of our investigation, and that independently of all the *aids* that revelation has imparted to us. And no one would acknowledge this fact sooner than the Philosopher whom I have quoted, who was always ready to express his *faith*, counting even the wisdom such as *he* possessed as nothing when compared with what God Himself hath made known to us[g]. "Thus

[d] We must go a long way back for the origin of the idea. The ancient Medical School of Alexandria considerably departed from the teaching of the great Hippocrates, though it inculcated his theories of the "humours." Again, afterwards, the learned and ingenious Galen adopted the current theories as to humours and the four elements, and believed in the *three kinds of spirits*—the vital, the animal, and the natural—all flowing from the one great Cause, Nature. Nevertheless, Galen was a vigorous opponent of Epicureanism and "Chance."—See more in Dr. J. W. Ogle's *Harveian Oration*, pp. 12, 13, &c., delivered June 25, 1880. A valuable Treatise, and the perusal of which will amply repay the trouble, from its interesting information.

[e] Lord Bacon's Works, vol. vii. p. 646, Spedding's Edit.

[f] Bracton, fol. 5, l. iii. p. 107.

"Lex fecit quòd ipse sit rex."

We may quote also the following from a thirteenth-century poet:—

"Dicitur vulgariter ut rex vult, lex vadit,
Veritas vult aliter; nam lex stat, rex cadit."

Quoted by Creasy on *The Constitution*, p. 182.

[g] "Jam verò (Rex optime) cùm carina parva, qualis nostra esse potuit,

far," says he in a letter to his king, "have I steered my bark around all science which belongs whether to the old, or the new, world! What remains for me to traverse but the depths of Sacred and Inspired Theology? Nevertheless, if we are still to extend our voyage of discovery, I must be content, for a while, to quit my little vessel of Human Reason, and embark in the *ship of the Church*, which *alone is able, through a divine instrumentality*, to direct my course aright." No wonder then, upon such a topic, if we find an Ecclesiastic, with high intellectual endowments, employing the sublimest language, because it is consistent with truth. "Law," says Hooker, "pervades everything, whether in heaven or on earth; so that what we call 'Nature' is but Law universally felt, and ever at work." "Touching Angels," says the same learned author, "which are spirits immortal and intellectual, as in numbers they are huge, mighty, and royal, exist in perfect obedience *unto that* Law which the Highest, whom they adore, love, and imitate, hath *imposed* upon them." Once more, "Only the works and operations of God have Him for their worker and *for the Law* whereby they are wrought." Yes; "The Being of God Himself is a kind of Law to His working; for that perfection which God is, giveth perfection to that He doeth." Of course in no sense can we say that human power is greater than the Divine. But we can say, that the Divine will is the measure and *law* of His own Omnipotence. And the world itself has visibly received from Jesus a manifest token of the fact. For in the narrative

Hooker on the Law Divine.

universum ambitum tam veteris quàm novi orbis, scientiarum circumnavigaverit, (quàm secundis ventis et cursu, posterorum sit judicium), Quid superest, nisi ut vota, tandem perfuncti, persolvamus? At restat adhuc Theologia Sacra, sive Inspirata. Veruntamen si eam tractare pergamus, exeundum nobis foret e naviculâ rationis humanæ, et transeundum in Ecclesiæ navem, quæ sola acu nauticâ divinâ pollet ad cursum rectè dirigendum."—*Ad regem suum*, Lord Bacon's Works, vol. i. p. 829 (Ed. Spedding and Ellis).

With respect to the use of the term *scientia*, we may quote St. Augustine's distinction:—

"Sapientia est rerum divinarum cognitio,
Scientia, rerum humanarum."

of Christ's miraculous power, whilst St. Mark mentions, "He *could* there do no mighty work," St. Matthew, in allusion to the same details, as categorically declares, "He *did* not many mighty works there because of their unbelief[h]."

Human Law derived from God.

But, perhaps, the definition of what Law is, is made none the easier if we limit the same to our own world[i]. For, undoubtedly, where God Himself is immediately concerned, there is the same system of Law throughout. It matters not whether we speak of things great or small, each thing individually is what it is, and will so continue to be, in the same place and order, to which it has been assigned. So likewise, as all is administered under the government of the same Omnipotent, Watchful, and Superintending power, the law of the action of that power is the same unerring will which formed each thing at first, giving the existence adapted to each, and which it will continue to the end!

And although, no doubt, the difference of the two ideas is great—it does not signify how minute the matter may be—there is, and always will be the fact, however forgetful human legislators may be, that all Law, in the abstract, emanates from, and is based upon, the originating Will of God. "By Me Kings reign," saith Wisdom[k], "and Princes decree justice." And St. Paul too puts forward the principle very prominently to the law-giving people to whom he addressed his epistle, "There is no power but of God." "The powers that be," i.e. whether of legislation or administration, "are ordained of God."—"Ordained," i.e. not only in the source and beginning, but for the constitution and settled existence of the power. The law in its enactment may be derived from a mere human source, and as ex-

[h] Cf. St. Matt. xiii. 58, and St. Mark vi. 5.

[i] A Greek poet (Pindar) speaks in this same direction:—

"Νόμος ὁ πάντων βασιλεὺς
Θνατῶν τε καὶ ἀθανάτων."

Fragm. Incert., 1 Ed. Bliss, vol. i. p. 58.

[k] Prov. viii. 15.

acting[l] obedience may partake of the imperfections to which aught human must of necessity be liable. Still, every law which claims obedience, whether with reason, or without reason, grounds, or at least tries to ground, its claims upon the first and real foundation of all authority[m]. St. Paul, no doubt, in the Epistle before quoted, and which has often been appealed to, not only when the Law was good, but when, through human perversions, the Law was the contrary, is throughout, in laying down his principles, addressing himself to Christians, as though, with the existence of perfect laws, he pictured to himself the prospect of an universal obedience! At all events, whatever be the full interpretation of the Scripture, it may be called *an advance* towards the realization of one side of the question, when we remember the times under men like Diocletian, Domitian, and Nero, who are often put before the world as among *the worst specimens* of human tyranny. And St. Paul himself was not without experience of what a tyrant can do. Notwithstanding, the principle laid down is one, not of resistance, but obedience, the conviction being, that the duty, if not due to a man, is a debt which every Christian owes to God[n]! Certainly, St. Augustine enunciates the same kind of teaching which he had received from the Inspired Teacher before him, as also in looking from man unto God. "He who has given his gifts to Marius[o]," says the great Christian Father, "gave

[l] It matters not whether we speak of the Law, or of the administration of the Law: "Est enim magistratus lex quædam viva et sancta; sicut e converso lex est magistratus quidam silens et mutus."—*Corn. a Lap. in loc. Ep. Rom.*, Rom. xiii. 1.

[m] Summa Ratio est quæ pro Religione facit (Co. Litt. 341, a; Dig. 11. 7. 43). It is even said that a custom or statute directly contrary to Divine Law would be void. See Broom's *Maxims*, 4th Edit., 20, and authorities there cited. So in the *Year-Book* it is said: "Scripture est common ley, sur quel touts manières de leis sont fondés."—*Y.-B.*, 34 Hen. VI., 40.

[n] "Obedientia respicit in præcepto quod servat, debitum observandi. Hoc autem debitum causatur ex ordine prælationis, quæ virtutem coactivam habet, non tantùm temporaliter, sed etiam spiritualiter, propter Conscientiam, ut Apostolus dicit."—*St. Thom. Aquin.*, tom. x. Distinct. 44, Art. ii. p. 647.

[o] " . . . Qui dedit Mario, ipse et Cæsari: qui Augusto, ipse et Neroni; qui Vespasiano vel patri vel filio, suavissimis Imperatoribus, ipse et Domitiano

also to Nero,"—"he who gave to Vespasian and Titus, father and son, the best of Emperors" (people will accept the statement at its comparative value), "gave also to Domitian, the most cruel; and, that we may not say more about individuals, he who gave to Constantine, the Christian, gave also to Julian, the Apostate!"

The Revelation of God.

The thought, then, that we have now arrived at is, the amazing distance that exists between the Creator and His creatures, the Angels themselves testifying to the fact that in the highest they are, "all, but God's Ministers, and when standing in the Divine presence, they veil their faces with adorable humility!"

The question follows, In what way has the Almighty adopted means for drawing us nearer to Himself, and therefore, in a measure, if I may so speak, to bridge over the chasm that intervenes? It was a problem which engaged the curiosity even of the heathen, when they thought how remarkable, and how different was the formation of themselves, as men, from every other order of the lower creatures—that unquestionably man's aspirations must mount upwards, since every one carries the very assurance of it in the formation of his own body. A conclusion which they pushed still further, when they reflected upon that which was *within* us as well as that which was *without* us. And if we allude to *Revelation*, it is only because we cannot otherwise attempt to grasp God's gracious dealings towards us. Revelation opens out a much wider field of inquiry, inasmuch as God has furnished to us thereby a mirror (to use the ordinary illustration) through which we may look, and see ourselves clearly reflected. "Know thyself," is an aphorism which human wisdom has given us for a Canon of universal prudence, and which in every way concerns us individually. And for the attainment of this, there is a double mirror, that which is Divine, and that which is human. It is no other than a knowledge of what we are in ourselves, and

crudelissimo; et ne per singulos ire necesse sit, qui Constantino Christiano, ipse Apostatæ Juliano."—*De Civit. Dei*, l. 5, 21.

what we are in our relationship to one another, in the study of men and things, in the times in which we live. The two elements occasionally cross each other, the human and Divine. The human is illustrated and explained more fully by the Divine. And the Divine was anticipated by the human as a preparation, i.e. before the Revelation itself had been fully made known to the world.

Law of Nature and Conscience.

Clearly St. Paul himself argues on this principle, when setting forth the responsibilities that belong to the mere heathen, that without any revealed Law there is a "Law of Nature" independently of any such revelation[p], the first being the antecedent of the latter, so that they, i.e. the heathen, "are without excuse." Nay, that men, independently of revelation, may in some small measure be guided aright, we are told that this self-same "Law of Nature," and which confirms what heathens themselves have affirmed, consists of two kinds, viz., that which is derived from reason, induction, and the inward sense, and that which, like a spark, has been infused into the soul, often weakened, and often well-nigh extinguished, following our loss at "the Fall," and yet which, in spite of habitual ignorance and depravity, still exists, in some form or other, as the *Law of Conscience*. It would be difficult to picture Humanity in a more degraded condition than what St. Paul finds it to be, and of which, nevertheless, he gives his inspired judgment, "That when the Gentiles, which have not the Law, do by nature the things contained in the Law, these, having not the Law, are a Law unto themselves." Which means nothing more, as Hooker has sagaciously remarked, than that "by force of the light of reason, wherewith God illuminated every one which cometh into the world, men being enabled to know truth from falsehood, and good from evil, do hereby learn in many things what the Will of God is; which Will Himself not revealing by any extraordinary means unto them, but they, by natural discourse, attaining the knowledge thereof, seem the makers

[p] "Οὐ γάρ τι νῦν τε κἀχθὲς, ἀλλ' ἀέι ποτε
Ζῇ ταῦτα, κοὐδεὶς οἶδεν ἐξ ὅτου 'φάνη."

of those laws which indeed are His, and they but the finders of them out." So that the Divine Mirror, of which we have spoken, not only accounts for many things, admitting the knowledge and the consequent responsibilities of the heathen, but moreover elevates that knowledge, and adds to the still greater enlightenment of the Human Conscience. And if true of individuals, how is it less true of communities? For what is the history of the whole range of Legislation but a test of Civilization itself? At least, it is the history of a People, without the horrors of its wars and bloodshed.

We have spoken of Scripture as the "Divine Mirror," in which we may contemplate ourselves in our moral and political relationship to each other. But, moreover, Scripture is an *embodiment* of *Law*, the expression being borrowed from that harmonious system of order which distinguishes the highest works of the Creator, and touches even the existence of God Himself. Of course it is only by a kind of assimilation that we can apply the term to aught which is human, and because that which is permitted through His Will is said to be the Law of His Will. So likewise, it is only in the graciousness of His Will that He has revealed that Law to us, giving us, moreover, besides the knowledge, a means whereby that Revelation has been deposited as a trust, to be handed on for succeeding generations till the end.

The Church existing before "*the Incarnation.*"

A priori, therefore, we have a proof of the existence of a Church, since that which is once revealed, without a *Church* for a witness and for guardianship, would be revealed in vain. And the term, as we are apt to think, is not confined to the Economy of the Gospel, where it is so prominently brought in view by our Lord Himself, and His Apostles subsequently. But if we go backwards to the history of the Old Dispensation, the term is applicable, I do not say equally applicable, because under the Gospel, the Church received an *enlargement* of privileges, *and power also.* Nevertheless, not only was the Sacerdotal element a very prominent principle under the Jewish Economy (as we

shall see) to anticipate and perform all that was entrusted to its keeping, but the very term "Church" was used as well. At least, St. Stephen, in his defence before his enemies, wished to prove, that He Whom he was preaching, and for Whom he was ready to die, was no other than *He* Who had been spoken of beforehand in one of the utterances of their great law-giver Moses. "A prophet shall the Lord your God raise up unto you of your brethren, like unto me; Him shall ye hear. This is *He*, that was *in the Church* in the wilderness with the Angel which spake to Him in the Mount Sina, and with our fathers: who received the lively oracles to give unto us."

Moreover, those same[q] oracles were deposited in the Ark of the Covenant, which carried the "Divine Presence" amongst them, as ever speaking through the word of His Law. And as if the people could not move without that "Divine Presence," we read, "The Ark of the Covenant went before them." And it came to pass, when the Ark set forward, that Moses said, "Rise up, Lord, and let Thine enemies be scattered, and let them that hate Thee flee before Thee." And when it rested, he said, "Return, O Lord, unto the many thousands of Israel." Although, however, on referring backward, this is the first intimation of the term in Sacred Scripture, the fact long preceded the *Mosaic times*. All along throughout the patriarchal period, the same enunciation of the truth — the same *calling out*[r] (if I may so speak) and distinctiveness of God's people, can be seen, till it subsides into a family, and even the individual, like Abel[s], who is spoken of as the first martyr, on behalf of God's Truth.

But when we speak of the Church, is it needful to stop there? St. Paul, when declaring his own belief in Christ, and all the blessings that were to be the outcome of His manifestation, makes no mention of the limit of time in the

[q] Cf. Article XX. amongst the Articles of our Church; cf. also Rom. iii. 2.

[r] Ἡ Ἐκκλήσια, i.e. ἐκ καλέω.

[s] "Aliqui dixerunt, quòd Ecclesia debet durare usque ad certum tempus. Sed hoc est falsum, quia hæc Ecclesia incepit a tempore Abel, et durabit usque ad finem sæculi," &c.—*St. Thom. Aquin. In Symbol. Apost. Expositio*, Art. ix.

conception of the Divine Mind, touching the marvellous accomplishment that was to be. For "He was the Lamb slain," says the Apostle, "from the *foundation of the world*[t]," not merely as being prefigured in types and figures as the world progressed from the beginning, but as *pre-ordained* before the world was. Even so can the Church be spoken of, as pre-existing in the counsels of the Almighty, which, in the fulness of time, Christ, by the manifestation of Himself, would "purchase with His own blood."

Universality of the Church.

Now one of the first points to which Christ alluded in His earliest ministrations, was *the universality of the Church*. He shewed this first *in His own act*, as is recorded, in that He went up *into a mountain* to deliver His message, as if it were to be a Sermon for the Universe; and secondly, when He spake to His disciples, who were destined to represent Him afterwards upon His departure from the world, "Ye are the Light of the world—a city that is set on an hill cannot be hid." So, again, at the end was the declaration of the self-same truth, that their preaching and their "making disciples" should reach even to the ends of the earth, whilst, in the intervening time, He had told them, that they would not only succeed Him in the work, but that *their* commission would, in some measure, be identical with His own, which was, "As My Father hath sent Me, even so send I you." And upon these credentials, in a degree, would the authority be the same. *Visibly* enough when their Divine Master says, "These signs shall follow them that believe: In My name shall they cast out Devils, they shall speak with new tongues: they shall take up serpents; and if they drink any deadly thing, it shall not hurt them: they shall lay hands on the sick, and they shall recover[u]." This

[t] "Sensus est duplex: 1. ab origine Mundi, i.e. jam olim, ab initio, et ante omnia, ab omni ævo, puta ab æterno. 2. Agnus occisus est ab origine Mundi, non in se, sed in suis typis et figuris, puta Sanctis Patriarchis et Prophetis," &c.

"Sæpe enim per Hebraismum verba realia pro mentalibus ponuntur." Cf. *Corn. a Lap. Comment. in Apocalyp. S. Joh.*, c. xiiii. v. 8.

[u] St. Mark xvi. 17, 18; cf. Isa. liii. 4. "Quod a Prophetâ de peccatis dictum erat, Evangelista ad morbos corporis accommodat, sive quia Christus corporis

last having particularly been pre-declared by the Prophet, that it should be one of the great characteristics of the Saviour on His coming into the world; insomuch that it is said further, "*Himself took our infirmities and bare our sicknesses.*"

Spiritual powers of the Church.

But besides this *visible* authority over the natural world, there was a power and authority given them in the spiritual world, "Verily, I say unto you, whatsoever ye shall bind on earth, shall be bound in heaven, and whatsoever ye shall loose on earth, shall be loosed in heaven." Already to one Apostle, St. Peter, the Saviour had assigned that power—but here Christ subsequently renews it[x], by imparting the self-same gift to *all*, and *all together*, that there might be no self-seeking, i.e., "no division in the body." But then, whence does the emanation of that authority flow but from one common centre?—that Divine Institution, of which they, at the beginning, were to be the embodiment, and which Christ spake of *as the Church*, and to which the Appeal[y] was in the first instance to be directed. For "if he shall neglect to hear them," says the Divine Teacher, "tell it to the Church," but "if he neglect to hear the Church, then let him be unto thee as a heathen man and a publican." In other words, the Church preceded its own development in the Apostles.

But moreover, we may remark, that it is not without a cause that the Apostle, when giving his directions to Timothy upon some of the essential doctrines of the faith —even mysteries of godliness as they are called, that "God

morbos, non, nisi propter morbos animi, curabat, ut St. Chrysost. Hom. 28 . . . sive quia ita solet S. Matth. prophetias non ad eundem, sed ad similem sensum, accommodare, ut c. 15. 18."—*Maldonat. Comment. in St. Matt.* viii. 17.

[x] Bp. Jeremy Taylor argues in this way: "St. Peter had the keys given him, so had the Apostles, and so have their successors; St. Peter was the pillar of the Church, and so were the other Apostles; he was a foundation, and so were they; for Christ hath built His Church upon the foundation of the Apostles and Prophets: he was Πέτρος, and every one of them was Πέτρα, a rock—and Christ was the corner-stone."—Vol. xiv. p. 71, Ed. 1822.

[y] "Voluit enim Ecclesiæ tribunal ultimum esse ad quod essent peccatores, cùm aliud non esset emendationis remedium, deferendi. Ideòque summam illi tribuit potestatem," &c.—*Maldonat. in St. Matt.* xviii. 18.

was manifest in the flesh, justified in the Spirit, seen of Angels, preached unto the Gentiles, believed on in the world, received up into glory," he adds—but preceding all, and which was to form the basis of this Christian teaching —there was to be the remembrance, that the *Church*, the depository of the Faith, was no other than '*the House of the Living God*.' Or again, as St. Jerome intimates in his comment upon this Scripture, that having truth for its foundation, the Church stands, like a pillar[z], to sustain all the superstructure which the building was destined to carry! And it is in this way that *the Creeds* themselves speak.

The Creeds.

Now admitting, for a moment, that the Creeds do not, in every respect, attain the object for which they were instituted, viz., in guarding the purity of the faith. Supposing, moreover, that their existence has, as some assert, a tendency to fetter the activity of the human intellect, and that, with such fixed reminders against 'free thought,' the mind cannot expand, or wander at will, accepting *this* article of the faith, and rejecting *that*. Still the Creeds, we must allow, give us some important information as to what the teaching of the primitive Church must have been, and protect, therefore, Scripture itself from wrongful interpretation. Nay more, we may gather, that those points only were introduced, as articles of Belief, which were, in every sense, *fundamental* in their character; and being fundamental, the Creeds became the guardians of what had been already admitted[a],

[z] "Ecclesia est columna et firmamentum veritatis, quia in eâ solâ stat veritas firmata, quæ sola sustinet ædificium Ecclesiæ."—*Corn. a Lap. in* 1 *Tim.* iii. 15.

[a] *The late Sir John Holker on Infidelity.* Speaking at a meeting in the Corn Exchange, Preston, in connection with the laying the foundation-stone of a new church, he is reported to have said (after expressing the opinion that the infidelity was to a large extent a "result of religious bigotry and intolerance of bygone times"): "It is of minor importance to describe the origin of the scepticism which so greatly prevails. What we have to do is to combat these evils. I believe they will be most firmly and most effectually met by the earnest teaching of a comprehensive and liberal theology, by placing reliance not so much upon dogmas,—on abstract doctrine,—as in the evidence of the existence of a Deity which is afforded by the economy of Nature."—*Daily Telegraph, Oct.* 18, 1880.

but which in turn began to be doubted, or openly assailed. But yet granting again, that after all that can be said in their favour, the Creeds are only human compositions, and therefore the mere organs of human opinion—and though going back to a very early period of Church history, the objection lies, they do not reach the first starting-point of Christianity itself. And yet are we sure that the value of the Creeds is not far higher than we are putting them at? We should remember that, if not exactly co-eval with Apostolic times, they may be, and indeed probably are, the statements gathered up into form, of what the Apostles had declared in their public teaching, Scripture itself having suggested the nature and form of a Creed, which would particularize the several points more distinctly.

When the Eunuch came to Philip to be baptized, the former saw but little difficulty, after he had been once assured of the necessity of the Ordinance. "See, here is water," says he; "what doth hinder me to be baptized [b]?" As if, with a willingness of mind, the external element were the only other needful appliance. But there was to be one step more, and that of the first importance. Philip said, "*If*

If Sir John had been as familiar with ecclesiastical subjects as he unquestionably was with matters of his own profession, he would have remembered that '*dogma*' *per se* (so far as the action of the Church is concerned) was never used for a weapon of offence, but in self-defence against some definite error that was thrown up, in the wildness of ignorance and human invention. The reply is, If the Creeds have effected so little (conceding all that Sir John states) as the guardians of definite truth, where would our Christianity have been without them? Paley was neither a great divine nor a great philosopher. But we can scarcely deny he was possessed of as much shrewdness, or common sense, as most men. And he states in his "Christian Evidences" that no heresy has ever existed in the world, which did not attempt to base its authority upon its own interpretation of Scripture, in addition to its knowledge afforded "by the economy of nature." To prevent heresies, the old Christians not only adopted Creeds as *safeguards*, but introduced fresh prayers into their Liturgies as safeguards also.

[b] "Multa alia credenda sunt, ut quis dignè suscipiat baptismum, ut mysterium S. Trinitatis, Ecclesia Catholica, remissio peccatorum, &c. Quare dubium non est ea evangelizasse Philippum et credita esse ab Eunucho. Præcipuum ergo Articulum de Christi divinitate dumtaxat hìc nominat Lucas, et sub eo cæteros intelligit: quia is unus toti Orbi erat novus et pœnè incredibilis, ac recenter peractus: Eum ergo ubique præ cæteris prædicabant et inculcabant Apostoli."—*Corn. a Lap. Comment. in Act. Apost.* viii. 37.

thou believest with all thine heart, thou mayest. And he answered and said, I believe that Jesus Christ is the Son of God[c]." "And straightway he baptized him[d]."

Teaching of the Creeds with respect to the Church.

But, perhaps, the force of the argument will not be lessened, if, upon this question, we look at the declarations of the Creeds themselves. Two of the three Creeds specifically mention the Church: one, with the characteristics that the same is "holy and catholic;" the other that it is "catholic and apostolic"—terms not so very different in meaning from each other. So in both cases there is an acknowledgment of the human element, in that the boundary of its influence will only, so far as this world is concerned, be circumscribed by the earth itself. Whilst the other term, in both cases, as an essential characteristic, savours of that which is Divine—"holy" in itself, i.e., in its original formation as being called the 'very body of Christ,' and "holy" in its effects, "for the temple of God is holy, which temple yĕ are."

Moreover, the Article under consideration is clearly connected with the preceding proposition, which is no other than an expression of belief in the Holy Ghost Himself, as though by this truth it were declared, that what human life is to the human body, such is the Holy Spirit to the Church of God—the animating principle of its being. So that when we say individually, "I believe in the Holy Ghost[e]," there follows immediately, "I believe in the Holy Catholic Church." But then again, if we express the two ideas in identical terms, as St. Anselm[f]

[c] Acts viii. 36, 37.

[d] We are aware that this confession of the Eunuch is not to be found in some MSS., but, in any case, its presence affords evidence of the practice and belief of the Primitive Church.

[e] "Scriptura et Paulus dicunt aliquando nos 'credere in Deum,' aliquando nos 'credere Deo.' St. Augustin. in Psalm 77, hæc duo distinguit. 'Plus,' ait, 'est credere in Deum quàm credere Deo: nam et homini cuilibet plerumque credendum est, quamvis in eum non sit credendum. Hoc juxta communem Latinorum phrasim verum est: verùm juxta phrasim Hebræorum, Pauli et Scripturæ hæc duo idem sunt.'"—*Canones Verb. in Epist. S. Paul. Corn. a Lap.*, p. 19.

[f] "Anselmus dicit, quod potest dici, 'In unam,' in quantum in isto effectu

would suggest, then we in effect say, "I believe in the Holy Ghost, who is the one animating principle of the Holy Catholic Church of Christ."

But truly as a part of the Creed, this enunciation of the Church is concerned with every other part, forming a connecting link, as it were, in the chain of Christian doctrine from the beginning—from the Divine Being Himself—to the accomplishment of all things, which is "Life everlasting."

Nay more, it may be called an *indivisible* link, implied in the very term by which we describe such a proposition in the Creed[g]. And so when descending to the present state of things, St. Paul rises in his thoughts, and breaks forth into words of inspired eloquence, in the contrast he would draw between the present and the preceding Divine dispensations. And yet the declaration reaches only to one single point of what might be alleged, "Ye are come," says he, not simply will come, but ye are already "come unto Mount Zion, and unto the city of the living God, the heavenly Jerusalem, and to an innumerable company of angels, to the general assembly and Church of the first-born, which are written in heaven, and to God, the Judge of all, and to the spirits of just men made perfect, and to Jesus, the Mediator of the New Covenant."

Such is the picture which St. Paul gives of the Church of Christ! And such is the authority which the Church exercises in guiding the early principles of her teaching!

The Church contains both Divine and Human elements.

And yet we need not go to the Creeds for a confirmation of the statement, that there is a human as well as a Divine element in the Church of Christ, the danger at the present day being rather, lest, in looking

intelligitur veritas increata, scilicet ut sit sensus, In unam Sanctam, i.e. in Spiritum Sanctum unientem Ecclesiam."—*St. Thom. Aquin.*, tom. xi. Distinct. 25, p. 406.

g "Articulus nomen Græcum est, et importat indivisionem, unde membra, quæ non dividuntur in alia membra, dicuntur Articuli. . . . Et ideo in definitione prædictâ Ricardus (de S. Victor) secutus est et proprietatem nominis, dicens, quod est indivisibilis unitas, et etymologiam, secundum quod sonat in linguâ latinâ dicens, quod arctat nos ad credendum."—*Ibid.*, 402, 3.

only at the human characteristics, our belief should become weakened on that side which ought to constitute its strength in the world. St. Paul himself, who discourses so beautifully about the Divine privileges of the Church, is not slow in acknowledging the existence of the other fact, whether looking at the Church herself, or those who were concerned in the promulgation of her doctrine. This Apostle is rightly looked upon as one of her greatest champions; nor can mankind deny him anything, whether of energy, or self-denial, or intellectual vigour with earnestness of purpose, to make known what he significantly calls "the unsearchable riches of Christ." Yet the great Apostle thus speaks of himself and the difficulties which beset him in the mission to which he had been called, "We preach not ourselves but Christ Jesus, the Lord, and ourselves your servants for Jesus' sake." . . . "But we have this treasure in earthen vessels, that the excellency of the power may be of God, and not of us." His work he describes as a difficulty of no ordinary kind, comparing it, in the language of a soldier, to nothing else than the attacking some almost impregnable fortress, the "casting down imaginations and every high look that exalteth itself against the knowledge of God, and bringing into captivity every thought to the obedience of Christ." "We are troubled on every side," says he, "yet not distressed: we are perplexed, but not in despair: persecuted, but not forsaken: cast down, but not destroyed"—till, at last, amid the feelings of all this, the mind falls back upon the assured existence of the *Divine* element, "Who shall separate us from the love of Christ? Shall tribulation, or distress, or persecution, or famine, or nakedness, or peril, or sword? . . . Nay, in all these things we are more than conquerors through Him that loved us."

The work, therefore, becomes a struggle between the principles of good and evil, and of which the world itself is the battle-field. And it does not follow that the fact is less true, because through indifference we see not, or care not to see, the course that the conflict is taking, it may be to the risk of doing damage to the Church, or

it may be with a trust, that the passing clouds are but the harbingers of a brighter and more enduring sunshine!

The Church persecuted.

And it is evident that the first Christians were prepared for all this. At least, they had heard and received the teaching of our Lord Himself, who said, "If they have persecuted Me, they will also persecute you;" and "If they have kept My saying, they will keep yours also:" the converse of the proposition being equally true, "The disciple is not above his Master, neither the servant above his Lord." Nevertheless, with all this acknowledgment on the one side, the other thought was never absent, that though the Gospel was intended for the world as the scene of its work and labour, to raise mankind to a higher life with brighter expectations, it was not *of* the world, but, originating in the Divine mind, was intended for the accomplishment of the Divine purposes for mankind.

It was true, that our Lord was in many things conformed to the world. How marvellously, we may say, when He took our human flesh upon Himself, born of a woman, going through the various gradations of earthly life, sharing its weaknesses, its cares and sorrows, yea, in that He became obedient unto man and subject to his laws, performed the duties of a loyal citizenship, and was content to be brought before a human tribunal with results, in His innocency, that strike us with amazement and awe! Still the declaration He made *then* was apparent throughout His ministry: "My kingdom," said He, "is not of this world." As before, He had comprehended His disciples together with Himself, "Ye are not of this world, I am not of this world."

The Church loyal to Cæsar, but obedient to Christ.

Accordingly, the fact is equally apparent in His first disciples. All that He had predicted of them literally came to pass, in that they also were persecuted for the Truth's sake. They were driven from place to place. They were brought before rulers and arraigned on different accusations. They were imprisoned for the Faith. All this, and more, was their undeviating experience. But, like their Divine

Master, they too recognised to the full the Divine principles which they had received. It is written, that not one only, but *all* the disciples said, "We ought to obey God rather than men."

In like manner, St. Paul protested, whilst accepting the duty of human obedience, "Neither against the law of the Jews, neither against the Temple, nor yet against Cæsar, have I offended in anything at all"—having already declared for that which dictated still greater boldness, "I am ready not to be bound only, but also to die at Jerusalem for the name of the Lord Jesus." Accordingly, the assertion of the principle soon took in action the higher range.

When the disciples believed that human judgment, or that a human tribunal, was exceeding its own peculiar province to interfere with what the disciples held to belong exclusively unto God, *they protested.* Only, the interference by the State is what has happened, and must continually happen, when the principle of a Church, in its Divine mission, is not recognised. We see the independent jurisdiction of the Church established by the Church herself at the beginning, both in her individual members and in her collective capacity. I say nothing about those whom St. Paul takes upon himself to condemn by virtue of the authority which he claims, cutting the offender off, like a diseased branch, from the parent-tree; using, moreover, the strongest language for the condemnation, as though assured, in every way, that the sentence was just and right!

Christians settled their own disputes.

But we can trace the same, consistently, when the appeal is made from himself to others, who, by profession as Christians, share the responsibility: "For what have I to do," says the Apostle, "to judge them also that are without[h]? Do ye not judge them that are within? . . . Therefore put away

[h] In like manner, "St. Paul in speaking about the incestuous person goeth not to any temporal power, although there were sundry laws then, both in Greek and Latin, written of such matters, but doeth it by the spiritual sword alone."—*Sir Thomas Ridley, D.C.L.*, p. 214. "View of Law Civil and Ecclesiastical." With regard to Dr. Ridley himself, see p. 50, note.

from among yourselves that wicked person"—those that are 'without' comprehending all that are Pagans, and thereby beyond a Christian jurisdiction. From which, further, it is evident that there was in St. Paul's mind a clear distinction between a *secular* and a *spiritual* tribunal, when, from the foregoing, he developes, in another degree, his ideas, to discuss the matter as to what Christians ought to do when questions, not specially their own, become matters of dispute. Even then, he would have them to recognise (it may be) a Christian duty. "If the world," says the Apostle, "shall be judged by you, are ye unworthy to judge the smallest matters[1]?"

The Council of Jerusalem.

But as a still greater argument upon the point, the first Christian assemblage at Jerusalem must not be omitted. Above all other such Councils, this carries with it an importance which is its own, not merely because it was *the first*, and therefore the foundation of all that followed, but because of the peculiar circumstances which were the cause of its being convoked, and the authority with which it was regarded then, and ever after. The seal of that authority was, "It seemed good to the Holy Ghost and to us." The fruits were visible in what followed. "So when they were dismissed . . . and when they had gathered the multitude together, they delivered the Epistle"—the result of their deliberations being, "which when they had read, they rejoiced for the consolation."

The objection, however, may be made, this is only to look at one side of the question, when we appeal to Scripture for the authority of the Church. Just as when we go to the Creeds, what are they but the exponents of the Church's teaching? So that the deductions which are drawn therefrom will necessarily lean more to the one side than the other. But it has been conceded that, both in the Creeds and in the Scriptures, the human element is easily detected, and moreover, the fact is implied in the

[1] "Si per vos Christianos et Sanctos judicabitur totus mundus, quanto magis per vos, quasi arbitros, minimæ vestræ lites componi debent."—*Corn. a Lap. Comment. in* 1 Cor. vi. 2.

inquiry, that the *secular* aspect must be kept in view. Still further, St. Paul remarks, in the very chapter from which I have drawn some part of my argument, that the Church was beset with difficulties of controversy, as well as other matters, from which there could be no escape, since the Church could not go out of the world. On the contrary, as has been already remarked, the world was to be the scene of her labours, the which must be patiently endured, in order that the world might be made better, through the advancement of Christ's kingdom!

Every Society must have Laws.

Suppose, then, we adopt another line of argument for establishing the *authority of the Church*. It shall be drawn this time from plain practical life, and therefore from a lower level, if we consider the Church, simply, as one of those organized Institutions or Societies[k], which, from time to time, are continually appearing before the world. I do not say whether they must be religious, or political, Societies. For my purpose, it will be enough to remark, that they are bodies of individuals who have combined for a purpose, whatever the nature of that purpose may be;—and still further, that, like the Church herself, they not only combine, but endeavour, in the best way they can, to add to their numbers and importance. So far I have been speaking of bare organization, without drawing any comparison as to objects or results. Only, so far as we have gone, the Church presents some of the very features which many of these Associations exhibit.

[k] In this matter we need not appeal to modern experience at all. The light given us by antiquity would have sufficed. There were clubs or societies (ἔρανοι) established for charitable, or convivial purposes, or for both together. They were very common in Athens. Plato (*Legg.*, p. 915) disapproved of law-suits in matters connected with the above, and would not allow them in his Republic. The fact is, they *settled all their disputings amongst themselves*.

I need hardly remark that in speaking of those institutions together as though placed in the same category, it is only done for the sake of argument. To point out the differences I prefer using Hooker's words to my own:—

"The Church," he says, "as a supernatural society doth differ from natural societies *in this*, that the persons with whom we associate ourselves, in the one case, are men simply considered as men, but they to whom we are joined in the other are God, angels, and holy men."—Lib. i. 15. 2.

Without taking, then, more than one step in advance, it is evident, where, and whenever, this kind of Association exists, there must be not only a motive for so combining, but a principle of union of some sort, by which, after formation, these Societies are kept together. And what is the bond but the organism of Law, or conditions through which their proceedings are to be regulated? That each man should become a Law to himself, i.e. should be able, under the circumstances he has placed himself, to follow his own bent or will, and so hold himself superior to any law which the Society has enacted, or agreed to enact, would tend to bring such an Association to an end. The principle is clear, whether appealed to on a larger, or a smaller, scale, that where there is no Law, anarchy, confusion, and destruction must ensue—clear, it may be added, whether referring to a political, or a religious organization. It follows, each individual, who claims for himself an interest and responsibility of membership, will first recognise the duty of allegiance to all that has been laid down as necessary for union.

The Laws of the Church.

The Church, therefore, in her work, being the largest, the most important, and comprehensive of all these Societies, if she could, would, in one way, bring all of them within her embrace, not necessarily to interfere or undo them, but to elevate their principles to a higher platform than they may have yet attained, thinking it no wrong, if she also has her rules and regulations, that these same rules should be loyally observed by her members. And once more, if any of those rules are designated by the name of "Creeds[1]," in defence of *her*

[1] The following will shew that the Church cannot afford to weaken, or do away with, any of her defences.

"The extent to which the thing has gone on in Germany is, to use a phrase of the late Lord Russell, 'horrible and heart-rending.' There, even 'the devout female sex' . . . casts off occasionally its faith." Mr. Baring-Gould, in an article of painful interest which he has contributed to the "Literary Churchman," quotes the remark which an accomplished German lady, married to an Englishman, made to him the other day :—

"When I was a child" (she said) "I believed in Christ born at Bethlehem,

principles, it is because the Law of her guidance is that self-same law which has been entrusted to her keeping, as a sacred deposit, by the Word of Inspiration. But then, if disputings arise amongst any of these Societies; for it seldom happens, if ever, under the most stringent precautions, that Societies, such as we have been considering, can be kept together without difficulties of some kind arising; they may assume the best of names that human language can devise of "fraternities" or "brotherhoods," where one would think, *à priori*, the very title would be a reminder of the duty of *oneness* of mind. Nevertheless, experience tells us that it is not so. But here again, their very laws, as being interpreted by themselves, or else interpreted on principles deduced from those laws, may be the point in dispute, which may need inquiry and settlement. Be it so. There probably need be no difficulty here. They who first framed the regulations received by the Society, have the power, either through themselves, or by an authority delegated to others, to interpret, modify, or alter. These are not laws like those of the Medes and Persians, which can never be altered. The source of the first enabling power can re-impart itself to meet the fresh difficulty that may have arisen.

Internal and External authority.

This, again, is a condition of things adverted to by St. Paul. He was well enough acquainted with human nature to know, that the point debated upon, and which threatened a spirit of division in the infant Church, would not be confined to that place, or age, but would re-appear in some analogous form. And therefore, when he gives his judgment, he intended that its effects should reach forward to all time in the history of the Church. The only additional point he urged was, that so little were Christians authorized to shrink from settling their *own affairs*, that rather, if

and in the rising from the grave at Easter, and in 'Cinderella,' and 'Little Snowflake.' But when I became a girl of fifteen, I had put those things behind me as childish things; and now I come among English Church-folk, into a world where all, or some of, these old stories are believed by grown men and women—and it puzzles me."

called upon, they were to adjust the *disputes of the heathen* also [m].

But then comes another difficulty in the doings of these Societies. An extreme case it may be; notwithstanding, it may arise, for it has arisen over and over again, i.e. in the event of the dispute being of such a kind, that it *cannot be* settled by members of the body, but has to be transferred for adjudication to another, and a higher, Court. But then, in this case, the transfer is to a tribunal, where more learning, skill, and technical knowledge are brought to bear upon the subject, or where perhaps the judgment will depend upon the principles of Equity rather than the strict interpretation of the written Law, and where, surely, both skill and technical knowledge are especially required. But in either case, there remains the advantage of a secular subject being handled by a purely secular Court.

The same steps the Church has had to follow. But in the comparison of the two examples there may exist this important difference, that the topic of controversy in the Church may not be of a purely secular kind. Of course, when the circumstances are secular, it may be said, and fairly enough, that the Church is placed in precisely the same conditions as when a secular Society has to appeal to a secular Court. But then, as we have just now said, the points in dispute may not be secular at all. On the contrary, they may be those in connection with the highest range of Christian doctrine. And reason as well as history tells us, that the Church has her own technical phraseology to express her thoughts and intentions, her own precedents to appeal to, her own doctrines embodied in her Creeds and Formularies. In short, the Church [n] has a law of her own, as distinctly marked in its character as any other Society must have, if continuance is an object which each

[m] This is very apparent, e.g., in the history of Constantine. And as to the first point, we have the historical record, "Ecclesiasticis sanctionibus vetitum clericis vel antiquitùs fuit ad Laicorum tribunal consistere, ordinemque suum contemptui aliorum exponi."—*Selvagg.*, vol. ii. p. 12, lib. iii. tit. 2.

[n] I quote the following striking remark of St. Augustine about the Church, if only to mention her power and responsibility :—

"Non crederem Evangelio, nisi me auctoritas Ecclesiæ commoveret."

has in view. Nay, her law is more distinctive, because all secular Societies must have much in common with aught else that is secular and temporal. But, to borrow an illustration (and as we have been attempting to prove), the Church is a building which stands upon another foundation in its *origin*, in its *aims*, in its *organization*, affecting, more or less, not only the individual members, but *the whole condition of a People*, in *a Christian* country, and touching *both worlds*, the *present and the future!*

A judge should understand the particular species of Law which he administers.

Now when, with this distinctiveness of Law, it is asserted, there must be a *distinctive knowledge*, which knowledge can only be gained by an educational training, one is assuming no more than what has been contended for, only a few years ago, in the development of Secular Law. And the reasonableness of this plea, if conceded, will do much towards helping us in defending the claims of pure Ecclesiastical Law.

Lord Brougham laid down this principle—this "practical[o]" principle it is called—"which was in accordance with the opinions of the most eminent men of his time, viz., that different kinds of jurisdiction, relating *to different subjects and different classes of cases*, should be assigned to the *bodies of judicature most familiar* with them, and therefore more *expert in the treatment* of them." This opinion, it may be answered, is but the opinion of one man only, however distinguished in dignity.

But then, and here is the value of the opinion, a complaint is made where the range of objection is not wider apart than (if we may use the illustration) when we are speaking of two branches of the same tree. They are both matters of *purely secular* Law. And the most eminent authorities to whom Lord Brougham refers are no other than Lord Chancellor Eldon and Sir Samuel Romilly—men of vast legal experience, and therefore not likely to advance extravagant, or ill-considered, opinions. "The former did not hesitate to tell the Common-Law Judges,

[o] See "Our New Judicial System," by Finlason, p. 105.

that they *did not understand* real-property law as well as the Chancery-Judges, who had generally been Conveyancers." "And the latter was most indignant" (*sic*) "when a man like Erskine or Plummer, who did not understand 'Equity,' was made a Chancery-Judge."

Of course, for obvious reasons, there is no need to offer an opinion upon the point in question. But if there is a shadow of truth in the allegation, I would borrow the same, and apply it in a case where the Law is of a *completely distinctive character.*

Suppose after an interval of a few years, subsequent to the above declaration, touching two branches of our English State Law, some Churchman should visit one of our ordinary Courts of Justice.

Or again, which would be more to the point I am contending for, suppose it should be a Court which is legally capable of dealing with Ecclesiastical subjects. For we must accept it as such by the present Law, howsoever much it should, in the eyes of some, fall short of any preconceived notions which might be held as to what a competent Court ought to be[P]. The question may be fairly asked, Would not such an inquirer be astonished to hear that a learned Counsel had to be informed by his eminent Chief as to what a "stole" is, viz., "an attenuated scarf;" although such "stole" or "attenuated scarf" formed one of the grounds for the action?

General ignorance of Ecclesiastical Law.

Perhaps, the question was put more in a kind of assumed simplicity than ignorance. But if the latter, one can only fall back for the explanation lately given by a learned and sagacious

[P] At present Ecclesiastical cases come before the Judicial Committee of the Privy Council by way of Appeal. This tribunal claims to exercise Ecclesiastical jurisdiction. These cases, also, come before the ordinary Law Courts on applications for *prohibition* and other distinctly secular processes. They do not claim to be Ecclesiastical Courts, or to exercise Ecclesiastical jurisdiction, yet they give decisions in Ecclesiastical matters. Unfortunately, the Judicial Committee has not distinguished itself in Ecclesiastical decisions any more than the avowedly secular Courts. We ought to have Courts with true Ecclesiastical jurisdiction, presided over by judges skilled in Ecclesiastical law, such as Sir Robert Phillimore.

lawyer as to "the origin of the evil[q]." He says, "Our Ecclesiastical Lawyers have never been placed in a position to make Ecclesiastical Law *their chief study:* they have devoted themselves to Testamentary Law, &c. A knowledge of the laws of the Church, properly so called, has been rather picked up than studied; and it could hardly have been otherwise, because the practice of this branch of the profession has never been profitable[r]."

And so because the study of the Law *will not pay*, the Church and Churchmen are doomed to be the sufferers!

What is an Ecclesiastical Court.

Suppose, however, we let our inquiring Churchman make another visit, on a like occasion, to a Court discussing Ecclesiastical matters. It is with no supposition, but with a strange reality, that he hears the question, gravely put before a general audience, *What is it that constitutes an Ecclesiastical Court?*[s]

[q] Correspondence between His Grace the Archbishop of Armagh and A. J. Stephens, Esq., Barrister-at-Law, p. 42.

[r] It is all the more gratifying to be able, notwithstanding these disadvantages, to quote the following from the same learned and candid author. After saying that "the Ecclesiastical Courts in England have produced but few writers practically acquainted with Ecclesiastical Law as distinguished from Civil and Testamentary Law," &c., he very honestly adds, "For any knowledge yet remaining among us of those original sources, we are indebted chiefly to *Divines*—for example, to Wilkins, Bingham, Beveridge, and Stillingfleet." The following is also added, as shewing the natural sequence of the before-mentioned, "Hence the administration of that law broke down from the oblivion of its sources, in those to whom its administration was committed."—*Correspondence on Church Discipline and Registry Act*, 1855, p. 42. By Archibald J. Stephens, Esq., Barrister-at-Law.

[s] This enquiry was made in the Court of Appeal as follows:—

In Dale and Enraght's case (Law Reports, 6 Q. B. D., 439) Lord Justice Brett asked Messrs. Willes, Q.C., and Jeune, what was their definition of an Ecclesiastical Court? The reply was, "A Court having general cognizance of Ecclesiastical cases." Brett, L. J.—"Suppose a new Court instituted to try a certain class of causes of an Ecclesiastical nature, is that an Ecclesiastical Court?" The answer was, "Probably so, but it is not necessary to decide that." A similar question was asked of Mr. Charles, Q.C., the counsel on the other side. He replied, "To give a satisfactory definition is *difficult*, but the mere fact of taking cognizance of Ecclesiastical causes *does not* make a Court an Ecclesiastical one." (Ub. sup., p. 446.) We may add that the definition of a true Ecclesiastical Court is a Court deriving jurisdiction from the *Ecclesia* or Church. This does not militate against the Royal Supremacy. The Ecclesiastical Courts did not derive their juris-

This time the question was only put; it was not answered either by Judge or Counsel. How could it be? The whole surroundings of the Court under discussion[t], Judge and Counsel, mode of procedure, plaintiff, indeed all but the hapless Defendant, proved, to a certainty, that *there was very little of the 'Ecclesiastical' about the matter!*

Persecutions for Heresy and Vestments contrasted.

It is needless to follow out the results of one of the group of cases just referred to. The issue is well known, and to go into the details would be travelling out of our way.

It will be better, in our imagination, to turn back some centuries, for an inquiry into a portion of our Ecclesiastical History. And better still, if we revert to an *early period* of events, when the Christian mind was so fully alive to *the importance* of some great doctrine, or article of faith, entrusted to the keeping of the Church. For so one must describe the doctrine, when speaking of the *Two-fold nature of our Blessed Lord.*

At first, as every one knows who is at all conversant with the details of the Church's earlier history, the difficulty, with some, was on the question of the reality of Christ's *human nature.*

Doubtless, for years after His Resurrection and Ascension, the memory of His marvellous works and wisdom had not died out. The recollection had become traditional, the question then being, How could such a manifest token of the Deity by any possibility be conjoined with our mere humanity? It is said that the recollection became *traditional*, because the distance could easily be bridged over between St. John and his disciple St. Polycarp, and then between the pupil and St. Irenæus. Hence

diction from the State. This fact is clearly pointed out by Lord Justice James in *Niboyet* v. *Niboyet* (Law Reports, 4 P. D. 5); and it is illustrated by the language of the Act creating the Probate and Divorce Court: we shall refer to this again. Sometimes, no doubt, we read of power being given by the Crown to Ecclesiastical persons or bodies to hold Courts, but *these are Courts for secular purposes.*

[t] Lord Penzance's Court. There is a striking contrast even between the room in which this Court is held and that of the old Court of Arches as described by Oughton in his Introduction, cap. ii. s. 22.

the sight of Irenæus became, as it were, the reflection of the Apostle Himself, who with his own eyes had both "seen," and "touched," and "handled," of the Word of Life!

But afterwards, and not so very long after, a change came over the minds of some, who could not see as those before them had already seen. There was to be a reverse side of the picture! And now the perplexity was, not the humanity, but the *Divinity of Jesus*—that, verily, *His* was a nature pure and holy—in both transcending the highest of Angelic Beings—but still falling short of the Deity Himself. And in some measure, to explain these two points, the two together, "the perfect Deity" and "the perfect Humanity," it was, that the third Creed was devised, and eventually received, by the Church.

But once more, suppose that even this were not enough for a safeguard, and a disciple accepted the one proposition, but decried, or frittered away, the other, what further protection could be appealed to? And were the accusation clearly made out, the answer would be, Had the Church no power *of her own* on which to rely? Did *she alone*, of all other Societies in the world, stand isolated in her helplessness? Had she no power to protect herself, or rather, for that is the point, to *safeguard*[u] the precious treasure committed to her keeping, from preceding generations?—from the day when the Cross was first lifted up by those who had witnessed all, in the perfection of Him from Whom we hope for our eternal deliverance—in the one nature as knowing His unspeakable sympathy, in the other, the Omnipotence of His power!

Would this be a time, then, for the Church to submit and remain silent, whilst she, in her members, had received the Law, that they, in turn, might quit themselves "like men" and "be strong." Or was her authority clean

[u] "Canones æquè in antiquis, ac in recentioribus Conciliis adversus hæreticos constituti, anathemate clauduntur in eos inflicto qui doctrinæ in iis contentæ sese opposuerint. Et sanè, uti loquitur St. Jerome in Epist. Galat. c. 4. c. 8. . . . Arius in Alexandriâ una scintilla fuit; sed quia non statim oppressa est, totum orbem ejus flamma populata est."—*Selvagg.*, lib. iii. tit. xvi. c. vi.

gone?—and gone it would be, as we are assured the "Candlestick" will be, if fear, or doubt, or cold and calculating indifference, should stand in the way, and stifle every higher and holier feeling!

Now the answer is given not for the purpose of *defending* or *advocating* the punishment[x]; only that the fact may be recorded. It is said, that the adoption of the system first took its rise in Spain. And would that, commencing there, it had never gone beyond the peninsula!

Imprisonment for Ecclesiastical Offences.

Such unbelievers, however, would be deemed by the Church to be heretical offenders, and as such, they would be punished by *imprisonment*[y].

How cruel, we are ready to exclaim, and with reason, to have inflicted such a sentence, as alike unworthy of the great principles of the Church, and inadequate for effecting the end proposed! Since Truth never is, and never has been, aided by the weapons of Persecution!

But what if, in modern days, we can discover something like its counterpart; nay, it is exactly the *self-same punishment*[z] which has been the issue of a vestment-case, in an English Court of Justice!

[x] In connection with the above we read elsewhere:—

"Hæretici, qui suum errorem detestantur, et abjurant, tum Ecclesiæ reconciliantur . . . at plerumque perpetuo carceris squalori mancipantur."—*Selvagg.*, lib. iii. tit. xvi. c. xi.

"Hæresis a Græco verbo αἱρέω, quod primariâ suâ notione denotat 'eligo.' Unde hæresis idem est ac electio; et speciatim electio dogmatis, atque ipsum dogma. . . . Christianis hæresis est dogma adversans principiis religionis Christianæ. Nam horum tantummodò habitus efficit Christianum: ac conclusionum habitus non ἁπλῶς (simpliciter) Christianum, sed Theologum, efficit."—*Ibid.*, lib. iii. tit. xvi. c. 1.

[y] It is right to add the following remark to shew that imprisonment at the time referred to must have been *a very exceptional occurrence*:—

"Quum verò quibusdam facinorosis custodiendis Clericis monasterium locus satis tutus non videretur; hinc ibidem Innocentius III. (1198) prælatis permisit, ut hujusmodi Clericos, postquam fuerint de crimine canonicè condemnati, sub arctâ custodiâ detineant. Atque hinc paullatim pœna carceris in curiis ecclesiasticis recepta est."—*Selvagg.*, lib. iii. tit. xvii. c. 5.

"In usu etiam antiquitùs videtur fuisse pœna exilii, sive recessûs a propriâ politiâ," &c.—*Ibid.*, c. 6.

[z] It is refreshing to go from the laws of Spain to the early laws of England. "The laws of Ethelred speak of *pecuniary* penalties for spiritual offences to

But then the former was on a point of Conscience. Be it so. And is there no Conscience as the groundwork of the latter? Or are we driven to the conclusion, that conscience is only of importance, when this, and not that, difficulty, is the cause of the perplexity?

At all events, in olden time, Ecclesiastical Law inflicted it for doing despite to a doctrine which the mass of Christians hold, and ever have held, most sacred and dear! But imprisonment for heresy, happily, has long ceased to exist. And upon this topic, one need go no further back than the days of Hoadley[a], towards the beginning of the last

be applied according to the direction of the bishops. So the laws of Edward the Confessor, collected by the Conqueror, speak of enforcement of episcopal sentences in case of ecclesiastical offences. The laws of the Conqueror declared that the bishop should administer Ecclesiastical Law."—*Reeves, Introd.*, p. 60, note.

As far as the individual clergyman is concerned, when offending, matters have receded, when, for a mere trivial offence, not one at least of doctrine, under a *Lay-tribunal*, not only is imprisonment possible, but "the spoiling of goods" is its adjunct!

[a] It would be difficult to forbear from referring to a somewhat analogous case, entitled "Secession from the Church of England," and connected with Bedford Chapel, Bloomsbury, London. This chapel, by the way, had been duly licensed according to Church Law, and the services were conducted in conformity with the rites of the Established Church. The chapel is proprietary: the Incumbent (S. A. Brooke) at the time of its closing intimated that it was his intention to secede from the Church of England, and conduct the service in future upon the principles of Unitarianism.

Secession from Church of England of Rev. S. A. Brooke.

Now he does not say whether, or no, or how long, he had been already conducting them on those principles. He gave the congregation to understand that two changes would be made, one was to *free it from doctrinal* forms to which he could no longer assent.

The text for the sermon was not inappropriate for the occasion: "Salt is good, but if the salt have lost his saltness, wherewith will ye season it?"

He went on to say: "He had seceded from the Church of England, not so much because he disagreed with its doctrines as because he disapproved of the very nature of it as an ecclesiastical body, in reference to its connection with the State. He did not wish to say anything against Churchmen, nor, indeed, against the noble work of the Establishment itself."

Then there follows this extraordinary statement: "It (the Church) had forced the whole body of Dissenters from it to suffer under a religious and social stigma, which had kept down large masses of men whose spiritual life was as deep as its own."

Poor Church of England! How large is the weight of transgression, which thou, unwittingly, hast to bear! The State is never mentioned, even, as

century, whose history is so well known to us, when the Arian controversy broke out again. So far from any punishment like this being inflicted, it has been complained of, with respect to the Church of England, that if she had possessed, or, possessing, had put forth, any kind of authority, the scandal of those[b] proceedings, with regard to Bp. Hoadley, would have been avoided!

But in more modern days the Civil Law inflicts the punishment; or, at least, and to speak more correctly, *imprisonment* is the *issue* of the judgment to the accused, together with the spoiling of his goods, and this not because of Him whom so many honour as their all-gracious Redeemer, nor yet the garments which covered His sacred Body (for these at the time were torn and divided amongst the infuriated multitude), but for vestments of human make, which are to represent, merely, an idea, in the celebration of His "hallowed worship!"

There is no need of the inquiry, which Court is the more merciful of the two—the ancient or the modern? But one

a sharer of the evil—the Church is alone. But a statement remains still more extraordinary, after the declaration that "he had taken the step not so much because he disagreed with the doctrines of the Church," when he proclaims his disbelief of Miracles, for example, that of the "Incarnation"—feeling "that upon this one question he could not remain in the Establishment."—*Daily Telegraph*, *Oct.* 18, 1880.

Now after all this, and more, the suggestion naturally arises, Could such a state of mind have been reached except *progressively*, especially when coupled with the fact, that when the complainant first undertook ministerial responsibilities, all must have appeared clear enough then? At all events, with promises and vows of the most sacred kind, the belief of the candidate for Holy Orders could not have been anything like this? And if so, the question comes, what must have been the character of the preaching for many a month, perhaps for years, to the members of this same congregation who pass over with him! Meanwhile, has all ecclesiastical authority been silent? Moreover, how unimportant and worthless does a vestment-case appear, when compared with an exhibition like this!

[b] We shall have to refer again, more fully, to the history of Bp. Hoadley.

In connection with our remarks on the want of technical learning of the present so-called Ecclesiastical Courts we may mention, that Lord Bramwell, in the debate on the Deceased Wife's Sister's Bill, June 11, 1883, said, he "knew no more of Theology than of Astrology." Yet the noble and learned Lord has sat, as Judge, in an Ecclesiastical Case, on the Judicial Committee of the Privy Council!

may with some justice ask, which Law is the more righteous of the two?

At all events, the Christian will, without hesitation, answer, that the motive of the wearer of the vestments, even supposing his course of action an error, was truth and loyalty to the faith of his own convictions, and above all, towards *Him,* who, without counting the cost, *redeemed mankind with His blood!*

CHAPTER II.

GREEK LAW IN CONNECTION WITH CANON LAW.

"I am debtor both to the Greeks," &c.—*Rom.* i. 14.

Advantages of study of Ecclesiastical Law.

THE question has often been put, and perhaps more frequently put than answered, What benefit can accrue from the study of Ecclesiastical Law? For whatever little influence it may possess in the present day, the matter is rather a subject of the past—one, perhaps, suitable enough to engage the attention of the antiquarian, whose employment is to read the mind of former generations. Hence, when a conclusion has been drawn too hastily, it has been alleged that so far as any practical good is concerned in affecting the times in which we live, the labour is but little else than fruitless.

So, at least, have some individuals argued, when looking at this particular portion of our Church history, and thus have more or less been deterred from prosecuting the study in its details. It is true this may be an extreme view of the case, and, as such, is to be deprecated.

But happily there are considerations which appear more encouraging.

Now, to take an extreme view on the other side of the question, a bold statement has been made, and which one cannot refer to without some misgivings, viz., that it is impossible for a student to become a good theologian[a] "without being at the same time a good Canonist," i.e.

[a] "Atque ex hisce omnibus ex æquo per decem priora Ecclesiæ sæcula jus canonicum coalescebat. Nullum enim tunc temporis Theologos inter et Canonistas erat discrimen. At sæculo xii. canonum facultas in duas abiit disciplinas, quarum altera theologiæ, altera juris canonici, nomen sortita est. Illi fidei, morumque tractatio, ceu proprium peculium datum; isti disciplinæ judiciorumque ecclesiasticorum materia reservata est."—*Selvagg.*, vol. i. l. i. tit. 2. 8.

And yet more strongly, "Hinc neutiquam dubitandum, theologiam tantâ cum jure canonico adfinitate connecti, ut nisi utraque conjungantur, mutuòque

an expert in Ecclesiastical Law. It would be away from our purpose to attempt to argue the point on either side. Sufficient it will be to quote the proposition, if only as a reminder; because some inquirers, however unconsciously, have, in act, in a small degree, as good as accepted the statement.

For instance, few people, in reading the Epistles of St. Paul, have failed to detect some of that author's peculiarities. It will not be needful to touch upon the *subject-matter* of his writings, which every Christian knows more or less; although it may not be easy for another to say with St. Augustine [b], that the perusal of a single passage in one of St. Paul's Epistles was, under God, the instrument of his conversion to Christianity.

St. Paul learned both in Hebrew and Roman Law.

The Apostle, then, writes in Greek, and therefore, as we might expect, his writings are not devoid of the idiomatic peculiarities of that language. But St. Paul, by birth, was a Hebrew. "A Hebrew of the Hebrews" he calls himself; so therefore in his ideas, and through his educational training, he was a Jew, sitting at the feet of Gamaliel [c], the

sibi lumen præstent, haud magnæ fieri possint in alterutrâ facultate progressiones."—*Ibid. infr.*, p. 89.

We may remark that the term "Theologus," as applied by the Christian Fathers to St. John, was distinctively because of his faith and writings concerning 'the ever-Blessed Trinity' and the 'Incarnate Word,' i.e. 'the Word of Life,' or 'the Living Word,' not simply the Word which was the Divinity, but the 'Word of Life, the Humanity.'

We may add to the above upon this topic, that of all the works of St. Thomas Aquinas, who combined in himself the great stores of Theological and Philosophical knowledge drawn from preceding generations, one of the best and most finished of his Treatises is his "Commentary upon the Epistle of St. Paul to the Romans."

[b] "Aperuisse mox librum, ac, Deo regente, oculos subitò conjecisse ad illud Pauli, Rom. xiii. 13, 'Not in rioting and drunkenness, not in chambering and wantonness, not in strife and envying. But put ye on the Lord Jesus Christ.' Quâ sententiâ, quasi fulmine, ictus S. Augustinus litem diremit, et ab hæresi ad fidem . . . se transtulit, eamque illibatam constanter in omnem omninò vitam conservavit."—*Corn. a Lap. Proœm. de Prærogativ. S. Paul*, p. 6, c. 5.

[c] Gamaliel was said to have been master (*magister*) of SS. Barnabas and Stephen, as well as of St. Paul. Note resemblance between Epist. Heb. and Epist. Barn.

latter a Legalist amongst his own countrymen. Hence, whilst most of the phraseology of the writings is Greek in the language and idiom, it is Hebraistic in its character, whilst the author's mind seems to have been impressed, even more than his contemporaries, with the close reasoning and logical precision of the jurist. This last peculiarity is more especially evident when, after a sojourn at Rome,—the seat at that time, and subsequently, of legal learning,—the Apostle thought fit to address an Epistle to the Christians dwelling there, or otherwise connected with that city. As a simple confirmation of the position laid down, we have only to admit, that the commentators of the present day, or such as have immediately preceded them, make it *more* their study, as compared with some preceding generations, to trace those various peculiarities of the inspired writer, whether of law or language, that they may understand the better the *logical tendencies* of his mind.

The Sources of Law.

But again, although none of the above reasons may suffice to influence *some* students in ecclesiastical law, there remains yet another. And this shall be addressed to the bare historical inquirer, who either loves the past for its own sake, or that he may impress upon others how much the present imitates the past[d]. Indeed, this is said to be one of the main advantages of studying history itself, that nations, like individuals, have the opportunities of learning from former experience what they should adopt, or what they should avoid. And has not Ecclesiastical Law a history of its own? So we may assert further, as *each nation* has its own laws, so, in the investigation of history, we find that

[d] Cicero speaks strongly on this point:—

"Historia testis temporum, lux veritatis, vita memoriæ, magistra vitæ, nuntia vetustatis."—*De Orator.*

At the same time, what is more important than the Christian side of the fact? Sir Edw. Coke reminds us: "Nusquam res humanæ prosperè succedunt, ubi divinæ negliguntur."

"History has been said to be 'Philosophy teaching by example;' and to no subject is the remark more applicable than to Law, which is emphatically the 'Science of human experience.'"—*Story's Jurisprud.*, vol. i. p. 46.

they may sometimes be traced, in one way or other, to *a common origin*, however modified, changed, or added to, as generation succeeded generation. And if each nation has its own *distinctive* laws, nevertheless, as in the case of the waters that issue from a fountain, the source is often one, whose supply forces its way, in divers channels, to swell the stream below. It may be, in the current, the waters at times linger, or else touch, and intersect each other—giving here and borrowing there,—yet, in the long run, though arising from one common origin, the separate channels can still be detected.

The Common Law.

But, narrowing the general observation to ourselves, the fact seems very apparent in matters affecting our own Judicature. For what is our Common Law? Perhaps we can safely reply, It is a law which, from its prevalence, may be said to be superior to all other kinds of law, except what we know by the name of Statute Law, which, again, is only the issue of principles that govern our Common Law. But whence comes this latter? It has been called the Law of 'Precedents,' as consisting of a collection of 'customs' and 'maxims,' which derive the force of law from long and immemorial usage; it may be sometimes coupled with the express sanction, or the tacit consent, of the Legislature. The decisions, therefore, acquiring force and authority from these precedents,—acted upon, and re-acting,—have been admitted as conclusions, arrived at by 'the common-sense of mankind.' Plowden calls it '*tried* reason.' Coke speaks of it as 'the *perfection of reason*.' But one of the most remarkable designations of it is 'Lex non scripta'—'the unwritten law,' as Lord Chancellor Ellesmere says, 'which is grounded upon the law of God, and extends itself to the original law of nature' or the 'universal law of nations,' and therefore primarily, as has been said, becomes '*lex non scripta*.' And it is one of the peculiarities of English jurisprudence, that the Common Law is held in such high and peculiar veneration. And this has probably not been without its effect in giving greater stability to our institutions than is found in most European

nations. It must be confessed, however, that there is a strong probability that our Judges in shaping the Common Law borrowed largely from the Civil Law, though without acknowledgment [e].

Roman Law.

By the Civil Law we understand the Civil and Municipal Law of the Roman Empire, which gave practical effect to, if it did not initiate, some of the principles of 'Common Law.' And here it is to be observed that under the same appellation of 'unwritten laws,' are to be found parts of the said 'Civil' and 'Canon Law' which have been adopted by us, and not originally enacted here. Only, perhaps, of this fore-mentioned 'Civil Law,' its influence was greater upon our 'Canon' than upon our 'Common Law.'

But however that may be, it is evident, that for an inquiry into many particulars connected with our 'Canon Law,' — in its origin and in its practical details, — we must go to the Roman Civil Law, in fact to that people who, perhaps, may be said to have proved themselves the conquerors of the world *more* by the power of their laws than by their arms. At least, we can safely affirm, that the influence which they brought to bear upon those divers nations which they conquered, was more permanent in its effects through their legal institutions, than through the devastations of war. At the same time, we must be careful not to overstate a fact, though we have used such a term as '*a fountain*,' by way of illustration, to describe the source from which any particular branch of law has originated. The fountain, after all, may be simply the visible outcome of the flow—a point, in short, to which other streamlets may have found for themselves an invisible channel—but which, meeting together, we can safely designate as a *beginning*, because it is that which is first *made visible to us*.

Influence of Greek Law on Roman Law.

Now at the time when the people's morals had been gradually declining from a higher standard, Juvenal, the Roman Satirist, laments how much his countrymen had been borrowing,

[e] *Maine, Ancient Law*, 32.

and not for the better, from other and more luxurious sources, and describes the fact by saying, "that the waters of the Tiber had become impregnated with the corruptions of the Syrian Orontes." What was true then, in the way of imitation, was not less true in generations preceding his, when the imitation was associated with a better aim, in trying to gain the knowledge of some of the fundamental principles of legal institutions. It was no discredit to that great people, feeling their own shortcomings, and seeing what an advance the Greeks had made in political knowledge—a nation known to them as yet, not by conquest, but by report or limited experience—that they determined to avail themselves of the external information.

Now in tracing the circumstance and comparing Greek and Roman law together, let me assume to myself the right of arranging the facts in a way which is most convenient to our purpose, and without necessarily adhering to strict chronological sequence[f]. It has been already stated in a previous stage, that one of the best tests of a people's advance in civilization is, not through wars and bloodshed, or the extension of an empire by conquest, but the condition of their laws as affecting the well-being and happiness of a people.

It is true, at times, that both of these characteristics, in a nation's history, may be seen together; so that it may be difficult to specify which is, and which is not, the cause of a people's greatness. But it is clear that if we look at the history of the Greeks in the Athenian nation—the most advanced of all these small but very important communities—the period of their greatest national glory was when their legislation was the most perfect and memorable.

[f] Probably the Greek views of the law of Nature strongly affected the Roman Law and its "jus gentium." (See *Maine's Ancient Law*, p. 52.) The older Roman Law, like all ancient systems of law, including the English and Irish, was excessively technical; and Greek influence seems to have done good work in introducing wider principles into Roman Law. The Canon Law had a similar effect on the law of our own country. As to the nature of Greek Equity, see *Story, Eq. Juris.*, 12th Ed., p. 3.

And yet to advance one step further, the Romans afterwards shewed us what *they* thought, as touching their own policy, that the best way of consolidating conquest was the introduction of their own legislation, so as to prevail over the barbarous principle, viz., that brute force is superior to any other influence whatsoever.

Law and the Arts flourish under the same conditions.

But surely, as legislation is the outcome of peace and national tranquillity, so is *Art*, and all else of a softening and civilizing kind. With regard to the Athenians, it was during the short interval of some forty years that the genius of the people shone forth and produced those marvellous works of sculptured beauty, as if by a kind of inferior inspiration; so that in the world's history since, those works have never been excelled, nay, scarcely reached, from that day to this. "The vitality of Greek Art," says one who is well able to give an opinion upon the subject[g], "is the living principle of all Art." It may be remarked by way of contrast that "the Roman *imported* rather than originated." In this, as we shall find also in other matters, "the Roman was too great a *plunderer* to be a workman or a scholar." "It was easier to import sculpture and paintings than to produce them oneself[h]."

This language is *strong;* but if it simply means, that the Romans drew much from the people alluded to, they have only done what others have done since their generation, and what Greece herself[i] did from Egypt, who in art, and law, and sacred rites, preceded her. Nevertheless, Greece *went far beyond* her teacher in all that pertained to Art and Law. These two are mentioned together, because with the Greek, in their excellence, they were developed together.

[g] Rev. R. St. John Tyrwhitt, *Greek and Gothic*, p. 44.

[h] Ibid.

[i] An Ægyptian Priest, having a conference with Solon, once said, "You Græcians are ever children, you have no knowledge of antiquity, nor antiquity of knowledge."—*Lord Bacon's Works*, vol. vii. p. 157.

The Greek idea of Law is Distribution, Proportion, and Harmony.

If we should attempt to define what Law is, drawing our conclusions from Græcian thought and Græcian legislation, it would be as their own language expressed it (*νόμος* or *νέμω*) in its general distribution, through the various conditions of society amongst them, and after them.

Now, in connection with this subject, we have before spoken of the body natural and the body politic[k], as if the one, in some small degree, bore a partial resemblance to the other, and each individual person carried along with himself a share of that resemblance. We may remark, further, that if it has been said, and rightly too, "that the Greeks idealized the form and status of the human body," it is a truth equally apparent, when we speak of them in their efforts to understand, and build up, what also they "*distributed*" in their legal system through the various elements, or members, of society. It may be, that the harmonious system of the one did something towards forming the national mind for dealing with the various problems of national law.

At all events, in the very threshold of the inquiry, we may detect in some of the details of their legal system a beauty of arrangement which was not lost, when transferred to their Western disciples. And touching their moral bearing, there are some points which may raise feelings of astonishment even among Christians of the present day; and eventually, if they did nothing else for us, they gave us, through their expressive language, the Scriptures of revelation! This idea of *distribution* they carried out also in the *principles* on which their law was based, those principles being[l] threefold, viz. '*τὸ δίκαιον*'

[k] See previous chapter, p. 3.

[l] *Οἵ νόμοι τὸ δίκαιον καὶ τὸ κάλον καὶ τὸ συμφέρον βούλονται καὶ τοῦτο ζητοῦσι . . . . πᾶς ἐστι νόμος εὕρημα μὲν καὶ δῶρον Θεῶν, δόγμα δ' ἀνθρώπων φρονίμων, ἐπανόρθωμα δὲ τῶν ἑκόυσιων καὶ ἀκούσιων ἁμαρτημάτων, πόλεως δὲ συνθήκη κοινή, καθ' ἣν πᾶσι προσήκει ζῆν τοῖς ἐν τῇ πόλει.—Demosth. Arist.* Quoted in *Telfy's Corp. Att. Jur.*

Law is a sacred spark from above, as all the heathen generally held their laws to be. *Vid. Grot. Pol. Max.*, p. 2, c. 8, pp. 68, 69.

or the just, '*τὸ κάλον*' or the beautiful and good, and '*τὸ συμφέρον*,' or the expedient and advantageous. Moreover, they put that principle first, the absence of which in their eyes destroyed the force, and excellency, of the other two. We are prepared, therefore, to hear that the Greeks held that the existence of all law was a *gift of divine origin*. This idea is not extraordinary. The same was laid down by the Romans even before they came into contact with the Greeks, the latter alleging still further, through the words of one of their great orators, that every law is a discovery (*εὕρημα*), besides being the gift of the gods; as if the enactment of good laws (for he is speaking of *them*) is unattainable by human wisdom. It matters not (for the purpose of our inquiry) whether the belief was genuine, or not. Or again, whether it was entertained and inculcated upon the public, that the legislation might be more easily acquiesced in. The record is enough.

Greek view that Law was Divine.

It may be remarked, however, that this was not the only acknowledgment of some *higher power*, vague and shadowy though it be, but even after the laws were enacted, they were copied and laid up[m] in a place which they considered more sacred than ordinary. Of course, we may say it was only a heathen temple. Still, in their darkness, or call it in their twilight, which was gradually being prepared for a brighter state of things in the fulness of revealed light, they did what they could to give a sacredness to their legislation,—possibly also with a view of interposing difficulties against *disturbing too easily* what *had been received as law*, after due deliberation.

Nevertheless, we shall hardly be prepared for the next step with regard to their idolatrous priests. Every one knows, in connection with Greek history, that the employment of the priests

Laws affecting the Priesthood.

[m] *Τοὺς νόμους θέσθωσαν ἀναγράψαντες ἐν τῷ* Μητρῷῳ, i.e. in so many words, laid up in the Temple of the mother of the gods.—*Harpocr. sub voc.* Μητρῷον.

"*ἀνάγραφω*, to engrave and set up—especially to engrave on a tablet, placed in some public spot, of laws and public acts."—*Liddell and Scott's Lex.*

was various. It consisted of duties[n] in relation to the public sacrifices, to offerings, and to purifications. With these, severally, they had to be fully acquainted in all their routine; and added to which, there was to be, specifically, the knowledge of *the architect* in the details of *temple-building*[o]. As if in these, and they were only applicable in regard to a sacred edifice, the two principles had to meet (if I may borrow the language of after times), the 'secular' and the 'religious.'

The tendency, no doubt, would be, that they would not regard the buildings the less, when everything was associated in their minds with themselves, in their own particular calling. And with all this, there was combined the personal qualification, that the same should be men of *fair* and *honest character*[p].

Of course, in considering the nature of Greek legislation, we need only allude to some of the salient and more remarkable characteristics. Nevertheless, they may be among those from which, as Christians, perhaps we can hardly withhold our astonishment, or admiration.

For instance, in the year of grace 1883 we have much to learn, and not without some sense of shame admit, the necessity of temperance and national self-control. For if there is one duty more clearly laid down for a Christian man, it is the moderation and virtue of sobriety. We are constantly hearing of it in some form or other, or else reading about it in some form or other in the

[n] "Τὸν ἱερεα εἶναι δεῖ ἔμπειρον νόμων περὶ θυσίας, καὶ εὔχας, καὶ καθαρμοὺς, καὶ ἱδρύσεις."—*Stobæus, Eccl. Eth.*, p. 122, quoted by *Spiegel, Corp. Jur. Att.*, p. 96.

[o] See foregoing note, also ἵδρυσις, i.e. a foundation, the founding of a building, especially applied to temple-building.—*Plato, Republ.*, 427; B. Legg., 909 E.; *Lidd. and Scott, Lex.*

[p] Οἱ ἱερεῖς δοκιμάζονται, εἰ ἀφελεῖς καὶ ὁλόκληροι.—See *Telfy*, p. 96, *Jus Publ.* And as such in office and character together, a mark of public respect was accorded to them.

Οἱ ἱερεῖς ἐξ οὗπερ ὡσιώθησαν, ἀνώνυμοι τέ εἰσι καὶ οὐκέτι ὀνομαστοὶ, ὡς ἂν ἱερώνυμοι ἤδη γεγενημένοι.—(*Lucian. Lexiphan.*, 10.) *Telfy's Jus Publ. de Sacris*, p. 96.

"Sacerdotes, a quo tempore consecrati sunt, anonymi sunto nec jam suo nomine nominabiles, ut qui sacro jam nomine gaudeant."—*Telfy*, p. 96.

periodical literature of the day, so alive has the public become, all at once, to the "importance of the question." We may add, it concerns the very oath which every Christian has taken as a *Christian soldier;* (the Greeks also had a military oath to take). But, when fresh enrolled into the service of Christ, he will do battle with, and conquer every temptation to excess, which leads unto sin.

Strict Laws affecting the Judges.

Now the Greeks had a very peculiar way of grappling with this social difficulty. They boldly began with the upper, not the lower, stratum of society. Their legislators were to be men of more than ordinary attainments. To use their national phraseology, they were '*men of mind*[q],' men of wisdom. Nevertheless, in their jealousy concerning them, or to the avoidance of any public scandal, the people removed the very temptations from their legislators. If, perchance, any one of them found his way into a *tavern*[r], on that very day the offender was denied the power of entering the Court of Justice, and taking part in the deliberations!

And this enactment was the more remarkable, in that it referred to their highest Court of Judicature, the Areopagus[s]. The same was in a locality near the famous city, and is familiar enough to most Christians as being the spot where St. Paul preached his well-known Sermon, probably to a very intelligent audience, the people's business being, we are told, to do nothing else than inquire about some new 'thing,' (*τί νέον*;)—a popular habit, which, perhaps, enabled the Apostle to gain a hearing for himself the more easily.

[q] They are called by Demosthenes *φρονίμοι*, from *φρήν*, 'the mind.'

[r] *Τοὺς Ἀρεοπαγίτας, ἀριστησαντά τινα ἐν καπηλείῳ κωλῦσαι ἀνίεναι εἰς Ἄρειον πάγον.—Hyperid., Fragm.*, 175; *Telfy's Jus Publ.*, p. 18.

[s] The Areopagus on Mar's Hill, was a Court of Justice (*δικαστήριον*), and also a Council (*βουλή*). It was empowered to interfere in matters affecting religion and morals, and previously to the time of Pericles, in the administration of public affairs. Isocr. (Areop., 39) in her happy times, gone by, points to the action of the Areopagus as one of the three great sources of their glory. Cicero also says, perhaps a little too strongly, "Atheniensium rempublicam consilio regi Areopagi."—*De Nat. Deor.*, ii. 29.

The fact was, at Athens, the principle lay at the very root of their legislation, that there should be not only sobriety, but something higher in moral tone, than what could be credited to the *mass of the population.* And as touching Law-givers and Law-dispensers, the rule was, that however exalted they were, officially, as compared with the rest of their countrymen, they were to be equally their superiors in conduct and high moral principle[t]. There was a legal supervision, also, over what they did, or said, or wrote[u].

Military Law.

We have already spoken of the oath of the Greek Soldier[x]. It was somewhat remarkable. And to examine it in one of its most stringent forms, suppose we look for a moment at the Spartans, who have been, rightly, called a *Nation of Soldiers.* As a matter of course, the soldier promises on oath, that he will never disgrace his arms; that, remembering the story, he will part with his life sooner than with his shield; having the same feeling, likewise, towards his country; since it was for her, and her only, that he carried his arms, and would in spite of everything retain them. As another point, he promised, and vowed, that he would stand by his comrade, whoever he might be; the next provision being, that, with the sacredness of his armour, he would with equal firmness hold to whatsoever was deemed by his country sacred and hallowed. "All this," says the soldier, "whether alone, or in companionship, will I do."

This public patriotic feeling was, especially with the Athenians, traceable to the Institutions under which

[t] Ἐάν δὲ τις Ἀθηναῖος ἑταιρήσῃ, μὴ ἐξέστω αὐτῷ τῶν ἐννέα Ἀρχόντων γενέσθαι.—*Æschin. e Timarch.* 21, Lex Solonis, quoted in *Telfy's Jur. Publ. Att.*, p. 51. This refers to the *Hetairæ.*

[u] Μηδένα ποιεῖν κωμῳδίας Ἀρεοπαγίτην. — *Corp. Att. Jur.*, Spiegel, p. 121.

[x] Ὅρκος δε ὅρκος ἔστω· οὐ καταισχυνῶ ὅπλα τὰ ἱερὰ, οὐδ' ἐγκαταλείψω τὸν παραστάτην ὅτῳ ἄν στοιχήσω· ἀμονῶ δὲ καὶ ὑπερ ἱερῶν καὶ ὅσιων καὶ μόνος καὶ μετὰ πολλῶν· τὴν πατρίδα δε οὐκ ἐλάσσω παραδώσω, πλείω δὲ καὶ ἀρείω, ὅσην ἄν παραδέξωμαι . . . . καὶ τοῖς θέσμοις τοῖς ἱδρυμένοις πείσομαι.—*Lycurg. ap. Plutarch. in Solon.*, 181; *Telfy's Corp. Jur. Att.*, p. 5.

they lived; for the members of the Areopagus[y] were specially charged with the supervision of religious duties, themselves discarding all opinion that was opposed, or was thought to be opposed, to the *religious convictions of the nation.* And, possibly, this office of theirs throws a little light upon the proceedings already referred to, in what St. Paul experienced in his public address to them. We are not told in the sacred history that he addressed his captious hearers *suo motu*[z], although the silence upon the point would almost seem to tell us so. Whereas, knowing the nature of the High Court, we reach the probability, that he was taken before the members of the same on the charge of introducing a *new* religion. For it is certain, that the Court took cognizance of the introduction of new and unauthorized forms of religious worship, called *ἐπίθετα ἱερὰ*, in contradistinction to the *πατριά*, or older rites of the State. So a *new religion* it would seem to be, as soon as, in his sermon, the Apostle got beyond the first principles he laid down of the existence of a God (for the Athenians were not *Atheists*), and then of a "Judgment to come." Thus far they bore with him. But when he advanced a step further, and told them boldly, that henceforth there was to be a *resurrection of the body*[a], being a new piece of intelligence for them,

The Areopagites had jurisdiction over religious matters.

St. Paul before them.

[y] Again, with respect to the Areopagus, it may be stated, that in situation it was not far from the Acropolis, sometimes called Ἡ ἄνω βουλή, to distinguish it from the Senate of 500, which sat in the Cerameicos within the city.

Its existence may be traced to remote antiquity. Solon modified its constitution and sphere of duty, and might almost be called its second Founder. And so high was its character that not even the condemned whispered an insinuation against the righteousness of the verdict—a character which the Court long maintained.—*Demosth. Arist.*, pp. 641, 2.

[z] *Ducebatur* is the term which tradition gives us.—See *Corn. a Lap. in loc.* Δύο εἰσὶ βουλαί· ἡ μὲν διηνεκὴς, ἡ ἐν Ἀρείῳ πάγῳ, ἑτέρα δὲ, ἡ τὰ πολιτικὰ πράττουσα.—*Telf., Corp. Att.*, p. 15.

But Demosthenes says, Ἡ βουλὴ ἡ ἐν Ἀρείῳ πάγῳ καὶ περὶ τῶν ἱερῶν προνοῖαν ποιεῖται.—*De Neær.*, 1372.

[a] "The immortality of the soul," says Hooker, "a man by nature may attain to the knowledge of." "But who did ever dream," says he again, "without a revelation, of the resurrection of the Flesh?"—Lib. i. c. 12. 2, p. 330, Keble's Edit.

"some mocked," and others said, "We will hear thee again of this matter." A doctrine, however, it is, which not only then, but since then, people have stumbled at in their belief, both civilized and barbarous.

Nevertheless, it is a doctrine, in the interpretation of Scripture, which the Creeds of the Church *declare most categorically*. And yet, if possible, it is found still more explicitly laid down as forming a part of the Christian soldier's oath, calling that self-same resurrection of the body *a resurrection of the flesh* [b].

Tendency of Athenian Law towards Mercy.

But now let us look into some further provisions made by the Greek Legislature, as they affected the individual citizen. And here again, we quit the hard and unbending system of the Spartan, to seek the higher civilization of the Athenian. The latter, with their other characteristics, tried to make life more of a pleasure than a drudgery. And for this purpose, they devoted a considerable portion of their time to festivals and public rejoicings. And we may add, upon one of these occasions the festival was marked with giving release to prisoners [c], reminding us of *the same fact*, in connection with another nation, whose history will come under review. Some of the legal provisions were on the side of mercy. And in their judicial arrangements, so careful were they of the interests of the accused, that the preliminary leanings were rather towards the accused than the accuser. Delays [d] were interposed by questioning the

See also in Hearne's "Antiquities of Oxford," as the profession of an old English Bishop (Tifredus) :—

"Carnis resurrectionem et vitam æternam *sine ambiguitate* speramus."—*Professiones antiquorum Angliæ Episcoporum*, p. 257.

[b] Again, see questions in the Church's Baptismal Service :—

"Dost thou believe . . . . the resurrection of the Flesh, and everlasting life after death?"

[c] Τοὺς δεσμώτας λυέσθαι τοῖς θεσμοφόριοις.—*Telfy, Corp. Jur. Att.*, p. 115.

[d] Δεῖ τὸν μέλλοντα κατηγορεῖν, εἰ πάντα ἕτοιμα ἔχοι τὰ πρὸς τὸν ἀγῶνα, ἐρωτᾶσθαι· εἰ δὲ σύμφησιν, ὅρκον ἀπαιτεῖται ὑπὲρ τοῦ ἐπεξελθεῖν. Εἰ μὲν οὖν ὄμνυσιν, εἰσάγεται, εἰ δὲ αἰτεῖ τινα χρόνον ὑπὲρ τοῦ ἐπισκέψασθαι, μένει ἡ γραφή (*manet actio*) Καλεῖται δε τὸ τοιοῦτον ὑπωμοσία.—(*Schol. in Demosth. Mid.*, 54. 1, 23.) i.e. An oath to bar proceedings at law on application for delay on affidavit —when resisted, it was by ἀνθυπώμοσια.

Plaintiff, such being the forms gone through, in order that the Defendant might not be taken unawares, and find himself on trial, without[e] due notice having been received. It is also curious to find, that a system of "equity" was known to the Greeks; it was transmitted by them to the Romans, and eventually was administered in our own Court of Chancery, chiefly through the influence of the "Canon Law," which was familiar to our early Clerical Chancellors. It has since been recognised in all our Courts of Civil Judicature. The system of Equity[f] is, as has been explained, a *power in particular cases, which is superior to the Common Law.* True, with the Greeks it was only applied in *private*[g] cases of legal difficulty. And the person judging was not a Judge in the technical sense of the term, but an *Arbitrator*[g]. Still, the principle was there and acted upon, and became so important in after times, that instead of being a secondary, it became a *primary* principle in Jurisprudence. The Church, moreover, through some of her great writers, laid hold of the same, as St. Augustine says, when alleging that as soon as the laws have been firmly settled after institution, the Judge shall no longer be permitted to judge of them, but *accord-*

[e] Has the good rule been always observed under the Ecclesiastical Law of the Christian?

[f] Equity in its general view means justice—in its technical sense it means a system of law, or a body of legal principles, which have superseded or supplemented the Common Law, on the ground of their intrinsic superiority.

See *Arist. Eth.*, l. v. c. 10. The "equitable" man is he who does not put the law to its extreme, but having legal justice on his side, waives the strictness of the claim.

Again, "Equity" is often used in a more limited sense. There is "Natural" Equity, and "Civil" Equity—the latter deduced from, and governed by, such maxims as are adopted by any particular State or Community. Aristotle has defined the very nature of Equity to be the *correction* of the law, wherein it is defective by reason of its Universality.—*Eth.* 5, c. 14; see also Story, vol. i. pp. 2, 3.

[g] Διαιτηταί εἰσί τινες τῶν ἰδιωτίκων κρίται.—*Bekker, Anecd. Gr.*, 1. p. 23.

Δικαστὴς καὶ διαιτητὴς διαφέρει· δικαστὴς μὲν γάρ ἐστιν ὁ κατὰ νόμον αἱρεθεῖς κριτὴς, δικαστῆς δὲ ὁ κατὰ συμφώνιαν αἱρεθεῖς συμβιβάσεως χάριν.—Quoted by Telfy, p. 138.

Ὁ διαιτητὴς τὸ ἐπιεῖκες ὁρᾷ· ὁ δε δικαστὴς τὸν νόμον.—*Arist. Rhet.*, 1. 13, 19.

ing to them; and he makes this important addition to the statement, that "should the working of the law be too harsh in its meaning[h]," then the Judge will be at liberty to soften that hardship, that he may keep to, and protect the intention of, the Legislator.

Sir T. Ridley on "Equity" in connection with the Canon Law.

Further, that we may account for that which happened in our own country some generations ago, when Ecclesiastics, acquaintanted with the principles of Civil and Canon Law, presided over the said Court, I would add the following as the opinion of a known Civilian of our own[i]. The quotation is long, but not unimportant:—

"As God doth dispose His government by *Justice and Mercy*, whereof Mercy hath the supreme place in the Lord's tabernacle (Exod. c. 25) as that which was put above upon the Ark, wherein were the two tables of stone to which St. James alludes when he saith, 'that Mercy rejoiceth over judgment.' So the Princes of this land have acted in imitation of that heavenly representation, appointing two supreme seats of government: the one of Justice, wherein nothing but the strict letter of the Law is observed; the other of Mercy, *wherein the rigour of the Law is tempered* with Equity[k], the sweetness of which is nothing else but Mercy quali-

[h] "In Societate Civili, aut Lex, aut vis valet. Est autem et vis quædam legem simulans, et lex nonnulla magis vim sapiens quàm æquitatem juris. Triplex est igitur injustitiæ fons, vis mera, illaqueatio prætextu legis, et *acerbitas ipsius* legis."—*Lord Bacon, De Argumentis Scientiarum*, lib. viii. p. 803.

[i] Sir Thomas Ridley, p. 393, *View of Law Civil and Ecclesiastical.*

It may be as well to add of this distinguished lawyer, that this Treatise, while it established the reputation of the author, 'contributed to rouse the declining credit of that jurisdiction.' See *Coote's Catalogue of Civilians.* The said Sir Thomas was descended from an ancient family in the county of Northumberland, and so was connected collaterally with Bp. Ridley. The present mansion, on the banks of the South-Tyne, still bears the name; and the chapel near it—still standing, or at least was standing some few years ago—is where the Bishop was accustomed to worship. Sir Thomas became Canon of Ely, Master of Eton School, afterwards one of the Masters in Chancery, Chancellor to the Bp. of Winchester, and Vicar-General to Archbishop Abbot. The book quoted from was much admired by King James I., and was afterwards reprinted.

[k] It should be noticed that the early idea of "Equity" was strongly connected with that of mercy towards the suitor, and of relieving him from an

fying the sharpness of Justice: to either which Courts they have sorted out men fit for their skill and education to manage the same, i.e. to the seat of Justice, the Professors of the Law of this land, who may be thought best to know the justice of the same: but to the other, they have assigned the Professors of the Civil Law; for that a great sort of the titles of that law are titles of Equity, as whatsoever is *Jus prætorium* or *Jus ædilicium*, with them is matter of Equity; so that they may seem best able for their skill in these titles (of which no other land hath the like) to assist the Lord Chancellor in matters of Conscience;" . . . "which opportunity of men furnished with this knowledge for that seat, his Majesty shall want, unless the study of the Civil and Ecclesiastical Law be maintained, which also, for the cases of Equity and Conscience therein, is called of the old writers *Æquitas Canonica*[1]."

Defects in Greek system.

On the other hand, it may not be amiss, briefly, to refer to what may be called *drawbacks* to the legal system under consideration. Although, no doubt, there are some particulars which appear striking for that age of political progress, and which may, in the course of our investigation, come more prominently before us. For instance, the fact of a man being a slave[m] by birth hindered him from participating in the administration of public affairs. Neither could he participate,—the stigma

alleged oppressor. Thus a man mortgaged his estate for a sum of money; if the money was not paid to the day, the estate was, by the terms of the contract signed by the landowner, forfeited. Yet Equity relieved. So Equity relieves from penalties, although the person has incurred them by his own contract and own default. It will relieve in many cases from "Unconscionable bargains," i.e. from such bargains as "shock the conscience." The old term for the Court of Equity was "Court of Conscience," a phrase which, at an earlier period, was applied to the *Ecclesiastical Court* (Johns. ii. 371). This is noteworthy.

[1] Trusts were recognised and enforced by the Spiritual Courts long before the Court of Equity enforced them. They probably exercised the power on the ground that it was *a sin* for a man to take for his own use property that was given him on trust for another. See below.

[m] "Servi enim (qui Græcis ideò σώματα, et Latinis Juris-consultis corpora dicuntur) sunt dominis, quod animæ est corpus."—*Arist. Pol.*, l. i. c. 3.

Τὸν φύσει δοῦλον γενόμενον μὴ μετέχειν τῆς πολιτείας. Quoted by Spiegel, p. 13.

accompanied him through life. Again, a person who was an invalid[n], or considered to be so, was debarred from the privileges which others enjoyed, the exclusion being, not that of a slave in that he could not, but that he should not, act during what might be only a temporary impediment; health of body, together with soundness of mind, being deemed a qualification necessary for the proper discharge of public duties.

The Areopagus.

Once more, it was a principle with this people, that the administration of affairs should be in the hands of those who might be termed the *well-to-do class*[o], as having something to lose, in case the affairs of the State went wrong. Solon, their great Lawgiver, did much to correct the above defects, whilst his public policy was, not to contract, but to enlarge, the area of public privilege. The Areopagus itself was widened as a sphere of usefulness, not only as to the qualifications of the persons engaged, but in the operation of its duties which it discharged towards the State. From being merely a Court of Justice, it became a great assembly for *public deliberation*.

In short, Solon so modified it, that he might almost be called, as I have said, its *founder;* the qualification with him, however, being not birth, but property. But whilst renowned as a Court of Justice, it became known also for its severity: having a care for the innocent, or the doubtful in crime, it by no means cleared the guilty.

The world's debt to Greece.

So far as we have proceeded, we have not, perhaps, done much towards elucidating the main subject under consideration. But allowance must be made for the times and people whose history we have been glancing at—remembering too what an interval of time must elapse before the influence of Christianity can be felt in the world!

[n] Τὸν ἀδύνατον μὴ κληροῦσθαι τῶν ἐννέα Ἀρχόντων.—*Lysias pro Invalid.*, 13. Ne quis invalidorum in novem Archontas sorte eligatur.

[o] "τὰς ἀρχὰς τοῖς εὐπόροις—all magisterial offices should be left to the well-to-do of the people, all other matters being conceded to the poor."—*Lex Solon. ap Plutarch.*, quoted in *Telfy's Jur. Cod.*, p. 8.

At the same time, a few particulars have been gathered which will appear again to intersect our path of inquiry, and without attaching an undue importance to them, they will interest us, if only looked upon as accidental coincidences in history. And yet, as facts, they are important, whether we look at the spirit of patriotism which was created by them, or view the religious feelings fostered by them, and as influencing the public, as well as private, life.

The Greek language.

At all events, we must concede in modern days, that we are much indebted to the Greeks for what they have conveyed to us through their beautiful and expressive language[p]. Their idea of "distribution," which they have applied to their system of legislation, is undoubtedly true of the instrument of its conveyance unto others. If the Book of God's Will has come to us through the Greek language of letters, so the study of the book of nature has been conveyed to us through the Greek language of symbols. It is equally true of all the books of science, whether of a philosophical or a theological kind. We borrow a multitude of their terms to express our ideas upon the special subject. The language is at once so technical, precise, and philosophical in its formation and expression. Let us take an instance wherewith to illustrate the point. The word shall be used in its original form, and then as it is used in the present day.

The word Dogma a Greek legal term.

There is, perhaps, no term in our own language that has created more apprehension to some minds than the word "Dogma[q]." Applied in its theological sense, we connect with it the idea of something so definite and precise, that its truthfulness can never be challenged; and for that reason the use of it excites suspicion, simply because we receive, as fixed

[p] "The restless wits of the Grecians, evermore proud of their own curious and subtle inventions, which, when at any time they had contrived, the great facility of their language seemed to make all things fair and plausible to men's understanding."—*Hooker*, l. v. c. iii.

[q] δόγμα, lit. what has seemed good, what has been decreed once for all = τὸ δεδογμένον.

and certain, what is beyond the human understanding to explain.

Now the Greeks applied the word in its primary sense to the institution of their own laws. They called them the "dogmas" of the Wise; and we have learnt that in the framing of those laws, if there was one notion more clear than another, it was, that when once these laws were deliberated upon and determined, they were to remain undisturbed and unchallenged.

Well; if human opinions can be so received, and so called for this their special characteristic of finality, why should not Theological Science borrow, and, so far as it can, urge upon Christians, in the reception of the high doctrines of their faith, the very terms by which that fixity is characterized?

Fixity of Faith of the Church.

It was thus that the early Christians acted in affirming the dogmatic principle. "Nor did they upon one and the same subject," says an author[r] well fitted to speak upon the topic for his learning and thoughtful piety, "allow that points before fixed should on the score of any novel presumption be handled over again—most likely *foreseeing* that if any body, and every body, had leave to retrace things once soberly decreed, the Church of Christ could have no fixed Constitution against any single error whatever, and every sound definition would be perpetually liable to disturbance from the recurrence of the same phrases." Now human opinions are, clearly, of less reliable value than aught which is declared to us by Revelation. "Humanum est errare." But through revelation, what is received as a truth, the same is treasured up in the "Creeds" and "Formularies" of the Church, which, in their turn, must have a force and fixedness far superior to anything we can appeal to, of a mere ordinary origin.

True; we receive what is human and earthly, because we see it. But, then, by a higher power within each of us, we receive what comes from God because we *believe* it.

[r] Morris's treatise upon "Jesus, the Son of Mary." The author is speaking of the Councils of the Church.

And what is belief? "To receive[s]," says a Christian Father, "what we do not see." Only we go to the Greeks to enable us to express that belief, since we have no word of our own to convey, with the same force and accuracy, the idea of *fixedness* which belongs to dogmatic truth.

Ecclesiastical Law, divine in its source.

Again, people sometimes scarcely give themselves the trouble of thinking what can be the reality of *Ecclesiastical* Law. We know what Law is in the abstract. And we know what it is as employed between man and man, in a business, or social, point of view. Nay, from what has been alleged, we can advance still further, and admit that Law, as originally conceived, and however administered, is really from a higher source than man, admitting also, that all the evils of mal-administration are not of God, but man. Still, what can be the meaning of Ecclesiastical Law? It has been stated, that the Church must have some Law, as every Society in the world has, and moreover, some Law peculiarly its own, incident to so many other Societies, although it may be, that Church Law is often unrecognised, except as seen in the human administration of it.

But the Law exists notwithstanding, independently of any human opinion, the changeableness and uncertainty of which amounts to a proverb. Whereas the Law I am speaking of exists in all its undeviating inflexibility—transmitted from the beginning through successive generations of mankind, inherent in the very Body, of which we are reminded by the Apostle, that it is the Body of Christ, "who is the same yesterday, and to-day, and for ever[t]!"

[s] "Quid est fides? Credere quod non vides." St. Athanasius has strongly remarked (contr. Ar. ii. 36): "It is better in perplexity to be silent and believe, than to disbelieve on account of the perplexity: for he who is perplexed may in some way obtain mercy, because, though he has questioned, he has kept quiet. But when a man is led by his perplexity into forming for himself doctrines which beseem not, and utters what is unworthy of God, such daring incurs a sentence without mercy."

[t] The Canon Law professes to be founded upon Holy Scripture. It con-

Canon Law defined.

But how do we express this Christian dogma? Only, by appealing again to the source already alluded to. But transformed into Christian language, and as the organ of Christian faith, the same is the Church, and the Law is the Law Ecclesiastical, or Canonical[u]. But why both terms, if the two are identically the same? In one sense, they are the same, because both have been received by Christians as the law of the Church—and so being one, what is predicated of the one term can equally be predicated of the other. At the same time, there is this difference, arising from our looking at the matter from two different points of view. The one has always existed, in some form or other, from the beginning, together with the power of making additions to, or modifying, the existing laws. And which power the Church has exercised in building up that Code of Ecclesiastical Law, which was subsequently compiled from the decrees of Councils, the opinions of the Ancient Fathers, and other sources.

As combined, therefore, that we may borrow once more the philosophical exactness of the Greek language, "Canon Law" is neither more nor less than a *rule*, because it is intended "to keep a man straight" (in faith as

tains about 1,000 quotations from the Old and New Testaments. Of course, many of the texts are interpreted in a way by no means consonant with sound exegesis, and passages are strained to support that claim to the liberty of the Church, which, in the middle ages, degenerated into licence for the clergy. One example will suffice: "Touch not Mine anointed, and do My prophets no harm," is made the ground of those wide claims by the clergy to exemption from punishment by the secular Courts even for the grossest crimes, which survived in a very modified form, nearer to our own day, under the name of "benefit of clergy."

[u] The term Ecclesiastical Law may be used in two different senses. It may mean law derived from the Church, or it may mean law affecting the Church. The Public Worship Regulation Act is Ecclesiastical Law in the latter sense, but not in the former. In England the Law-Canonical would strictly mean the law contained in the Foreign, or General, Canon Law, so far as received in this country, and the law contained in the decrees and constitutions of the Provincial and Legatine Synods, &c., so far as the same have become, and are, law. But of course the phrase is often used in a wider sense.

well as practice), "drawing him neither on one side or the other, but rather that which correcteth that which is out of level or line[x]."

[x] Sir Thos. Ridley, the Canonist, "A View of the Civil and Ecclesiastical Law," p. 97.

CHAPTER III.

JEWISH LAW IN CONNECTION WITH CANON LAW.

"Do we make void the law through faith? God forbid: yea, we establish the law."—*Rom.* iii. 31.

Bishop of Gloucester and Bristol upon the importance of study of the Old Testament.

AS an important help for the next step in the investigation of our subject, we cannot do better than quote the grave opinion of a well-known Ecclesiastic of our own day. The Bishop of Gloucester[a], when speaking at a meeting of the Upper House of Convocation, complained very strongly of the neglect now shown by a very considerable section of the juniors amongst the Church of England clergy, *in the study of Hebrew and its cognate languages.* His opinion is, that next to Greek in connection with the New Testament, the others must always hold a very important secondary place for the study of the "Old Testament," and that not only touching the latter, but as throwing light upon all that has been revealed to us in the "New." Indeed, an old Christian Father has not scrupled to ask this question, "What is the Old Testament?" He answered himself by saying, "The Old is the New predicted." But, then, what is the "New?" Again, says he, "The 'New' is the 'Old' fulfilled." So even as Christians we affirm it is all that, and something more[b], in the Divine accomplishment of

[a] Reported in the London "Guardian," Feb. 16, 1881.

[b] See Table of Canons in *Corp. Jur.;* Canons said to be extracted from Scripture (including Apocrypha), and quoted by Bowyer, p. 155.

The number of texts cited in the Canon Law from the Old Testament are about 788, and from the Apocrypha, 33. Of these texts, 280 are from the Books of Moses and the Book of Joshua. This affords a rough example the enormous influence of the Jewish Law on the Canon Law. It would, however, be a mistake to say, that the Canon Law was derived from the Old Testament. Its aims are not precisely similar. It is not intended to be the law of a nation apart from others, but rather of a 'holy nation' living among other nations. It is intended for the law of the kingdom of God in the

what was promised in the grace and mercy revealed in the "New," and reaching onward towards the end! And yet both "Old" and "New," in the several parts thereof, what are they all but links of the self-same chain, bringing the two ends together: the first, in the promise given; the second, in what St. John so beautifully, and so fervently, prays, "Even so come, Lord Jesus."

But it will be better to quote the precise words of the Bishop, as they were reported at the time:—

"Our young men instead of giving themselves to the quiet and serious study of God's Holy Word, instead of studying Hebrew, instead of seeking accurately to understand their Greek Testament, are wasting their fresh morning of life in idle and miserable controversies. Instead of striving to become meek Christian scholars, their ambition, if they read at all, is to be liturgiologists: liturgiologists, however, who could not write down from memory, in properly-accented Greek, that blessed prayer which is the model of all liturgical access to Almighty God. If I had to urge any remedy at the present time on our younger men, I would first say, in the name of Almighty God, a little more Hebrew[c]."

Quoting once more from the same source, and that the cognate languages may not be forgotten,—

"And what could be a better work for a young man than to give himself to the study of the venerable Version, portions of which may have been in the hands of St. John, the Apostle? I refer to the Syriac Version."

Again,—

"Has anything been done in regard to the illustration of the early and valuable Memphitic version? . . . If only the hours wasted in writing acrimonious letters on the Privy Council judgments had been devoted by some of our younger Clergy to such

world, until the world itself becomes the kingdom of Christ in God. To the above numbers may be added 1,110 from the New Testament—of these St. Matthew gives most, viz. 237.

[c] For some generations, perhaps, no single individual has done more for the study of Hebrew, &c., than Dr. Pusey, the late Hebrew Professor in the University of Oxford, who never spared himself, in any way, to promote so good an object.

a work as this, the Church and the world would have been the better for it, and they themselves wiser and more charitable."

Benny on importance of study of Jewish Law.

It will not be necessary to analyze this statement in detail beyond a reply, that had it been advanced some half-century ago, the accusation, in the main, could have been made with greater effect as an acknowledged fact. Still, touching the point referred to, the inference may be drawn, that a much greater attention to the Hebrew language, and its kindred dialects, will be of service to the Church.

But suppose, as a still further help to our argument, the opinion of a *Layman* is quoted, which reaches every section of Churchmen, young and old, in its various professional grades, as well as others. An interesting book has lately appeared on "the Criminal Code of the Jews[d]." The author complains of a general indifference upon the subject, which he handles, of Hebrew knowledge, saying, that whilst we can find time "to study the Laws of the Brahmins, the Parsees, Greeks, and Romans, the study of the ancient Jewish[e] people has been *systematically neglected*, and even whilst the Chinese and Mussulmen have found zealous exponents of their sacred and political Institutions." However, it must be admitted, that the writer in

[d] By P. B. Benny. (London: Messrs. Smith, Elder and Co.)

[e] On a matter analogous to our main subject, and which we must not forget, the study of Hebrew will be found of essential service. Few men of later years have impressed their own individual ideas upon Christian doctrine more than Spinoza—directly, in the philosophy which he formed, borrowing some of his notions from Descartes, and our countryman, Hobbes; and indirectly, as influencing others, who, though rejecting many important particulars of his system, nevertheless adhere to his rationalistic mode of arguing upon some of the highest mysteries, specified in our Christian Creeds. Spinoza was a man of undoubted ability, and by birth and training *was a Jew*, well versed in the Holy Scriptures, and early initiated into the study of the Talmud; so that even before he had left school he was conversant with the writings of the former Jewish scholars and writers, who lived in France, Spain, North Africa, &c., during the Middle Ages.

To be able, therefore, to understand many of his opinions, and, when necessary, to refute them, one need not add, that the first requisite is a knowledge of the very sources which were not French or English merely, but *Jewish*, from which Spinoza borrowed some of his philosophical reasonings, the same being traceable in some of the pantheism of the present day.

making his charge does it in a very quiet manner, comprehending the entire Clerical Body, and yet without any impassioned *Appeal to the Highest and Holiest of Names*[f]! But the charge is not the less serious, and is intended to be so. And yet, if to strengthen the force of his strictures, he also had made allusion to the various judgments of the Privy Council, who could have complained? At the same time, why should not every section of the Clergy, high and low, dignified or otherwise, concern themselves with these judgments? The subject-matter in every way concerns them. The issue has sometimes *very deeply* concerned them, when the Judgment has come from an Ecclesiastical Court to a clergyman, in the earliest stages of the dispute, who was unprepared, and who, without notice[g], found himself "a Defendant" in an Ecclesiastical cause!

But to proceed with Mr. Benny's uncomplimentary, I do not say incorrect, observations, he makes no mention of Hebrew with points, or without points. All that he wants is a sufficient knowledge of the Hebrew language, that men may be able to study, effectively, the laws of the Jews. "*The most profound ignorance*," he continues to say, "*prevails* regarding the practical mode of administering Law and Justice, as it obtained among the Hebrews during the prophetic period, and at the time of the destruction of the second Temple at Jerusalem." Of course, one answer to this is very easily made, viz., that every Christian, i.e., every Christian reader of the Old Testament, must have a certain amount of knowledge which the Pentateuch and other portions of the Old Testament contain. And this is admitted; but he dignifies the knowledge by no better name[h] than "popular conceptions,"—and adding to the admission with force, "As to perfect knowledge, we

[f] Every Hebrew scholar knows that the Jews always abstained, through a deep sense of reverence and awe, from using the name of God, the term, "the Name," being deemed sufficient. See note on Lord's Prayer below, p.65.

[g] Contrast with this the precept given by St. Paul to Timothy, "Receive not an accusation against a Presbyter," &c., and see Appendix A.

[h] "The popular conceptions upon them are gathered from the injunctions and ordinances of the Mosaic Pentateuch."—*Benny*, p. 5.

might just as well say, that by the perusal of our Statute-Book, Acts of Parliament, or written Law, we have *mastered the whole of our legal system without the aid of Common Law*, which is the Law of Custom or precedent."

The Jewish Law is contained partly in the Scripture, partly in the Talmud.

Nevertheless, the great fact remains, touching these Old Testament Scriptures, that much is given us there, even to the minutiæ of details, and recorded by those too, who, we believe, have been directly inspired by the Holy Ghost. At the same time, the question really is, Does that extraordinary and interesting people teach us in no other way than through their recognised and inspired Scriptures? Have they no records over and above all these? And is their history a *blank* except when, and where, the sacred records refer to them? Most of us know, that the reality of the case is widely different from this, since, as might be expected, what God revealed, and Moses and others declared to them, formed only the *foundation* of a vast superstructure, that in course of generations was built upon, although not inspired, and not pretended to be so.

The Talmud.

The "Talmud[1]" itself is a varied collection of Jewish learning, law, legend, and philosophy, containing sentiments and sayings, some valuable, scattered, unmethodically, through the ponderous volumes, with a mass of matter which, probably, would interest the general reader but little. But the complaint is, that professional men, so far from mastering the whole, do not *even attempt a part*, where alone, it has been remarked, that, after Holy Scripture, we can obtain a knowledge of the habits, customs, and practices of this marvellous nation. And, possibly, the study might help us a little towards gaining a more perfect insight into the

[1] The Talmud (from למד, 'to learn,') has been called "a treasury, in chaotic arrangement, of Jewish lore, scientific, legal, and legendary—a great storehouse of extra-biblical, yet biblically referable, Jewish speculation, fancy, and faith. There are two Talmuds, the Jerusalem, or more correctly, the Palestinian, and the Babli or Babylonian; the former being that of the 'West,' the other, which is by far the more popular and extensive, being that of the 'East.'

development of Ecclesiastical Law, as it in time affected the Church of Christ, in succeeding generations.

Influence of the Jews on the Christian Church.

Indeed, we may widen the proposition by saying, that the Jews have affected, very generally, both Christian thought and Christian practice.

We have already alluded to the first Christian inspired writers, how, in their conversion to the faith and obedience of Christ, they still retained much of what belonged to them *as Jews;* and that however transformed they became, in character and ideas, they retained something of what they had in themselves through education, i.e., through their intercourse with their fellow-countrymen, or again, which they had inherited from their parents and teachers. The Jewish mark is visible, to this day, in many ways. Neither was it intended that all national distinctions should die out. Otherwise, the great Apostle, in speaking of his countrymen, would never, for *their sakes* specially, have wished himself *even to be accursed.* And it was only when the Jews rejected the "new Belief," that the sentence was uttered, "Lo! we turn to the Gentiles." The truth of the matter being, that far more than what the generality of people imagine, has the Jewish[j] influence reached us in the present day. Our

[j] "The whole body of Divine Service amongst the Jews did consist of several prescript and set forms. At their temple, though a great part of their service was ceremonial and typical, consisting of divers kinds of sacrifices and offerings, which in the fulness of time were to be done away; yet this was attended with moral and spiritual services, consisting of praises and prayers, which were to continue for ever. For the Levites, whose office it was to stand every morning to thank and praise the Lord, and likewise at the evening, were wont to perform their parts, as with a world of solemnity, so also with hymns and songs, that were composed and set to their hands."—*Pelling's Good Old Way*, on Set Forms, p. 50, A.D. 1679.

"Hence it is, too, that we find some Psalms framed on purpose to be used on some special occasion; as particularly the 92nd Psalm, 'entituled, A Song for the Sabbath-day;' which was intended, questionless, to be sung solemnly on the Sabbath, in memory of God's rest upon that day, and to give Him thanks for His wonderful works of Creation and Providence. And hence it is, that the fifteen Psalms immediately following the 119th, are called 'Psalms of Degrees,' or steps; because the Levites were wont to sing them upon the fifteen stairs (upon each stair, one) which were between the women's and the men's court."—*Ibid.* The above book is also entitled "A Discourse offered to the Consideration of all true-hearted Protestants."

worship, our public and daily worship, the structure of our own Prayer-book, our Liturgy, of which it may be said, that, perhaps, of all the Liturgies of the world, it alone contains the Jewish Decalogue as a part of its holy Communion Service, the Priesthood (and why should we be afraid of the word?), the expression of praise, the chaunting, the blessing, the reading of the Scriptures[k], the consecration of places, and things, and persons, the remembering of God at meal-times as the Great Giver of all things:—nay, the day of worship, and the highest and holiest ordinance of Christian worship, are traceable, in some measure, to the same Jewish source, together with the elements[l] which our Blessed Lord sanctified for the

[k] "The reading of the Law and the Prophets was not arbitrary, left to the reader's pleasure what parts of Scripture to make choice of; but certain lessons were appointed for the day, and the Law was divided into fifty-four sections, and the Prophets into as many portions, for every week a portion; so that the office was prescribed for the whole year. . . . The Ruler of the Synagogue dismissed the assembly with the usual and solemn benediction."—*Ibid.*, p. 53.

[l] "Even their more private devotions were prescript and formal also; for instance, in the solemnity of the Passover, which was kept in their private houses, they had set forms of words, whereby they declared the meaning of the Mystery, and of the institution of the Lamb, the bitter herbs, and the unleavened bread; and this declaration was called 'a shewing forth' of the Passover; to which the Apostle alludeth, when he saith of the Lord's Supper, that it is 'a shewing forth of the Lord's death.' 1 Cor. xi. 26. They had set forms of words for the consecration of the Bread and the Wine: over the Bread they said, *Blessed be Thou, O Lord our God, the King of the world, which bringest forth bread out of the earth;* and over the Cup they said likewise, *Blessed be Thou, O Lord our God, the King of the world, which createst the fruit of the Vine.* Lastly, the whole action was concluded with singing of Psalms, beginning at the 113th, and so on to the end of the 118th, which six Psalms were called by them the great Hallelujahs. And, perhaps, as our Saviour used the usual or like form, when He blessed the bread and wine, so also they used that great Hallelujah, when the Evangelist tells us, that He and His disciples sang an hymn, and went out into the Mount of Olives." St. Matt. xxvi. 30.—*Ibid.*, p. 53.

The idea comes out very clearly in the Lord's Prayer. Without going very minutely into the particulars, it will be sufficient to make the following remarks. It could be illustrated largely from the Rabbinical writings, which, in some measure, rest ultimately upon the Old Testament itself.

For the first expression, "Our Father," cf. Deut. xxxii. 6, and Isa. lxiii. 12 and 16.

Both expressions, אבינו alone, and אבינו שבשמים ("our Father," and

occasion, when He said (whatever may be the exact meaning which we give to the terms of the proposition) "This is My Body."—"This is My Blood."

Again, the very prayer which Christians utter so often, both privately and publicly, and are taught to lisp from very childhood, which was given by our Lord Himself, is traceable also, in many of its provisions, to the same source—to Him who sanctified what He had received, bequeathing the same as a model for all prayer, and as a legacy both old and new. "New," indeed, when the Saviour said, with

"our Father, which art in Heaven"), are both used formally in the Jewish Prayer-Books.

"Hallowed be Thy Name." As already remarked, the Name of God, signifying the Being of God, is an especial Hebraic expression, and is used amongst other reasons to avoid express mention of God Himself. "Any benediction," says Berachoth, "which, without mention of the Ha-Shem (i.e. Jehovah), is no benediction at all."

"Thy kingdom come:" for the sanctifying of the Name, combined with the coming of the kingdom, see Zech. xiv. 9. Again, any benediction without Malkuth (kingdom) is no benediction at all. Cf. Berachoth, 40 b.

"Thy will be done." See Ps. cxxxv. 6.

"May it be Thy will, O Lord our God, to make peace in the family above, and in the family below."—*Berachoth*, 16 b—17 a.

"Give us this day," &c. See Exod. xvi. 4, "Behold, I will rain bread from heaven for you, and the people shall go out and gather a certain rate every day," דבר יום ביומו, *τὸ τῆς ἡμέρας εἰς ἡμέραν*.

See also 2 Kings xxv. 30. In the Peschito the expression is rendered ܠܚܡܐ ܕܡܬܡܐ, i.e. bread which is continuous. So St. Matt. vi. 11 (Curetonian Gospels).

"Forgive us our trespasses," &c. See Obadiah 15. The principle is conspicuous in the Rabbinical writings, "As thou hast done, it shall be done unto thee." See also Ecclesiasticus xxviii. 1, 2: "He that revengeth shall find vengeance from the Lord, and he will surely keep his sins (in remembrance)." "Forgive thy neighbour the hurt that he hath done unto thee, so shall thy sins also be forgiven when thou prayest," &c.

"Lead us not into temptation." This last word is used in the New Testament to denote outward and physical, as well as inward and spiritual, trials.

Also the Jews' Morning Prayer (Berachoth, 60 b) has the very petition, ואל תביאנו . . . . לידי נסיון.

"But deliver us from evil." It is a question whether 'the evil' here is *ὁ πονηρός* (1 St. John v. 18), or *τὸ πονηρόν* (2 Thess. iii. 3). But the ambiguity of the Greek is no more than a reflection of the same ambiguity in Hebrew, the word רע in the Old Testament being applicable alike to things and to persons.

For the above, and more, upon this interesting topic, see Excursus V. of *Taylor's Sayings of the Jewish Fathers*, pp. 138, &c.

the utterance of a prophecy over the Jewish Temple, that, ere long, of that magnificence there shall not be left one stone upon another, that shall not be thrown down. Notwithstanding, is it not written, "My house *shall be called of all nations* the House of Prayer?" (St. Matth. xxi. 13.) And last, not least, in the catalogue of peculiarities, there is the expressive and comprehensive word which ends every prayer, and every Creed, to which the Christian gives utterance. Indeed, so wide is the meaning, and so uniform the written expression, that it is said to find a place, throughout the world, in the vast majority of, if not all, the languages in which Christianity is confessed — but varying in the meaning, according as it is used in Prayer or Creed. Only in its fulness the word is just as we have received it, in its primary and original signification, the foundation whereof being "Truth[m]." Therefore, one need not add, nor need we scarcely wonder, that St. John so applies the term as a name to the Saviour Himself—that as He is *α* and *ω*, the beginning and the ending, so is He *Amen*, comprehending these, and all else besides, in His Majesty and Glory, and as the '*rock' of infallible Truth!*

The Amen.

Of course, the inference is obvious, that if in so many ways we borrow from the people of "the old Covenant,"—who influence us, in our daily walk and conversation, often, it would seem, almost unconsciously to ourselves, — the probability is, that Christian Law, i.e. Ecclesiastical and Canon Law, has, in some measure, been affected from its contact with Jewish Law. At all events, it will not be out of place to examine into this fresh field of inquiry. And at the outset we shall find, that the attempt need not be fruitless, if we apply the like test to the *Jewish Law* that we did to that of the *Greeks*. With the latter, we learnt what the national mind was, by the term which they used in describing law. With them the leading thought was its

Canon Law affected by Jewish Law.

[m] אֱמֶת, "Vox vulgò nota, Hebræis, Chaldæis, Syris, aliisque plurimis linguis usitata. Hebraicè reperitur ut substantivum."—*Veritas*, *Fides*, e.g. cf. Isa. lxv. 16.

'*distribution*[n],' an idea which we find to be correct, even as reaching to ourselves. And of this we shall have fresh proofs, when we come to examine into the nature and characteristics of the Roman Law, in which so much was borrowed, by that people, from their more Eastern neighbours.

Jewish idea of Law is "Instruction."

Now the Israelite, or Jew, says nothing about 'distribution,' when he speaks of *his* Law. Was it likely, *à priori*, that he should? As a people, they were placed apart from all other nations of the earth. God said they should be. And the very position which they occupied in their small and peculiar country, seemed alike to point towards this fact. In a corner of the great continent were they situated, with the 'great' sea on one side ('great' because they were comparatively ignorant of every other), with desert on another side, and hemmed in by mountain ranges on another, what 'distribution' could there be, since intercourse was difficult, if not almost physically impossible? Their idea, then, of Law was expressed by a word more congenial to the national mind. And how important the term, when we are told that their Law was given, and received, solely for the purpose of '*instruction*[o],' which idea at once explains how it is that the inspired writers, and, amongst others, he especially who bears the title of being the "wisest of men," connect knowledge *intimately with their laws*. In short, that the Law in his thoughts was deemed the beginning and the ending as well as the aim of all knowledge. "That the soul be without knowledge," says Solomon, "it is not good." "To know wisdom and instruction," says he, "to perceive the words of understanding, to receive the instruction of wisdom, justice, and judgment, and equity,"—the latter being words

[n] It may be stated that Curtius in his Greek Etymology (1875), section 431, derives *νόμος*, 'law ordinance,' from *νέμω*, 'to portion out, to allot, to distribute,' suum cuique tribuere.

[o] הַתּוֹרָה, i.e. Lex, vel Mosis tantùm, vel totum Verbum Dei, יָרָה, i.e. Jecit, aut jaculatus est. Hiphil, הוֹרָה, "docuit," "instituit." Apud Talmud.: אורויי מורינן, docendo docemus.

of legal thought. Once more, "My son," says he, "hear the instruction of thy father, and the *law* of thy mother." And as if the precepts of knowledge would encircle the soul, as ornaments beautify and adorn the body: "They shall be as an ornament of grace unto thy head, and chains about thy neck." "My son," says he again, "keep thy father's commandment and forsake not the *law* of thy mother." "Bind them continually upon thine heart." "When thou goest out, it" (the knowledge) "shall lead thee, when thou sleepest, it shall keep thee, and when thou awakest, it shall talk with thee." "For the commandment is a Lamp, and the *Law* is light, and reproofs of instruction are the way of life."

The term "Law" was often used to include the whole Old Testament, although at other times it has been applied *pre-eminently* to the Pentateuch.

In short, so engrained was the idea, if I may so speak, in the public conscience, that the word which, in its primary sense, is rather applied to the laws and regulations and ordinances which Moses, their great legislator, gave them, came to include the whole range of the inspired volume, their history and national policy, implying their public and domestic duties. All were comprised under the category of *Law*, because instruction and knowledge were to be the outcome of all the experience which, as a people, in the course of years, they had acquired, and should acquire, for themselves.

Later Jewish Law shewed no mercy to the ignorant.

And equally so did this feeling exist amongst them upon the subject of knowledge even when, because of their transgressions against God, they had ceased to be a people in their own land. "Knowledge is of great price," says an old Rabbi, "for it is placed between two divine names[p], as it is written, 'A God of Knowledge is the Lord.'" And therefore, mercy was to be denied to him that had no knowledge; for it is written, "It is a people of no understanding; therefore He that made them will not have

[p] *Hershon's Talmudic Miscellany*, Berachoth, fol. 33, c. i. p. 17. Published by Messrs. Trübner. 1880.

mercy upon them[q]." A prohibition, therefore, against shewing mercy to the ignorant, together with the threatenings directed against those who neglected the study of the Law (*sic*), was that which worked such a wonderful revolution, in the time of Hezekiah. For it is recorded, that when they searched from Dan to Beersheba, i.e. in the length and breadth of the land, from the extreme south to the furthermost north, "there could not be found *an ignorant man*[r]." Or, to give the force of their own expressive language, there could not be found a single 'man of the earth[s]' from one end of the country to the other. An expression, in fact, which, on higher grounds, the Apostle himself makes use of when describing, with his national feelings, the antagonism that subsists between those "whose conversation is in heaven" and those whose thoughts "mind earthly things."

Reforms under Hezekiah included instruction in Law.

It may be remarked, however, we have to ascend still higher, in order to gain the complete idea which grew upon the Jewish people in their estimate of the Law; and St. Paul in his pleadings with the Christian converts has only been quoted, that we may attain to the height which, even beyond Moses, connects us with its full existence. "Seven things," says the Jewish Rabbi, "were formed before the Creation of the

The Rabbis on the Law.

[q] Berachoth, fol. 33. 1.

[r] Sanhedrin, fol. 94, col. 2.

[s] "Woe is unto me because I have given my mind to an ignorant one," i.e. one of the people of the earth (עם הארץ).—*Ibid.* The same idea is expressed elsewhere. Cf. Hershon, p. 91, note.

The Rabbis teach, "Let a man sell all that he has and marry the daughter of a learned man" (תלמיד חכם). "But let him not marry the daughter of an עם הארץ, i.e. an illiterate man; for the unlearned are an abomination, as also their wives and their daughters."—*P'sachim*, fol. 49, col. 2.

"Again, no boor can be pious, nor ignorant man a saint."—*Aroth.*, c. 2, Mish. 6: cf. *Hershon's Talmudic Miscell.*, p. 92.

This is only quoted to shew the importance which they attached to learning. Strong language! but the condemnation may be found in a sentiment of equal vigour amongst the philosophers of Greece. Aristotle, when asked, "In what did the educated differ from the uneducated?" replied, "As much as the 'living from the dead.'"—*Vaughan's Life of Thomas of Aquin.*, vol. ii. p. 668.

world"—and of these seven, to the Law was assigned the credit of occupying the *first* place. There is only one thing which strikes another Rabbi, that may possibly be superior to it. And the same is worthy of being mentioned because of the development[t] of the good implied, "Showers of rain are greater than the giving of the Law; for the giving of the Law was a gladsome event to Israel only, but *rain is a cause of joy to the whole world, including cattle, beasts, and fowls.*"

Moses as a Lawgiver and the effects of Mosaic Law beyond Palestine.

But to descend to the plain facts of history, Moses upon Mount Sinai stands out, pre-eminently, as the grand Lawgiver of the Israelites. His fame, moreover, was not confined to his own people any more than the effects of the events, ushered in with the giving of the Law, were circumscribed by the wilderness, or the land towards which the Israelites were journeying. The Heathen were probably well acquainted with his name. Longinus speaks of him as "one of the most glorious Legislators[u]." In like terms of commendation for his wisdom, does Philo-Judæus speak, and states that the fame of the laws of Moses had gone throughout the world. Nor is the truthfulness of the tradition beyond possibility which Justin Martyr got hold of, in connection with another heathen country, that the great Philosopher "Plato had well-nigh got himself into trouble" with the High-Court at Athens, for making mention of the name of Moses!

Hence we arrive at the next stage of our enquiry, which is, not only that the accompaniments of the Law, but that the Law itself, in its effects, and some of its details, in the things which were seen, and heard, and felt, could not be limited to the people whom they more immediately

[t] Cf. Hershon, p. 314, quoting from the Midrash Shochar Tov, 146.

[u] Τῶν Ἰουδαίων νομοθέτης εὐδοξότατος, 'the most glorious lawgiver of the Jews.'

Philo-Judæus calls Moses 'a most wise lawgiver.'

Again, Philo-Judæus, lib. 1, *de vitâ Mos.:* "Inclyta fama legum, quas Moses reliquit posteris, totum Orbem pervagata, extremos ejus terminos attigit." Quoted by Zepper, *de Ep. Mosaic.*, p. 131.

concerned [v]. Indeed, we know how, in after days, St. Paul makes use of the facts in the course of his argument—only he mentions them just in such a way as, if it had been necessary, he might have mentioned any other facts which the Israelites had experienced, and handed on in the national records. The Apostle repeats over again some of the striking details which occurred, before the Lawgiver could gain access towards the Divine Presence, in "the blackness," and "darkness," and "tempest," "the sound of a trumpet," "the voice of words," and the "mount that burned with fire"—incidents which could not but live in the Jewish mind, as also with succeeding generations amongst their neighbours, if rumour did not, still further, make the scene almost universally remembered!

At all events, it is clear, from whatever cause the idea originated, that the legislators of other nations traced their respective laws, *backward*, to a Divine source [x]. The feeling was universally acted upon, and if it did not take its first rise from the scene described, whence did it come? For if their acquaintance with the Laws of Moses is certain, there is no reason why the other fact should be thought improbable?

The Pentateuch.

What concerns us more, however, is the Law itself as it appears in the Pentateuch, all proceeding from the mouth of God as delivered to Moses, and some parts (if it may be so spoken) bearing the impress of the very finger of God! Certainly what has been said of the whole range of the Sacred Scriptures, that they were given for "instruction"—this being the natural idea conveyed in the description of them—can with not less truth be predicated of the Pentateuch and its accompaniments. And yet further, that the "instruction" must be of such a nature that it not only concerned the Israelite

[v] "Illud tamen magis etiam mireris, non solùm Judæos, sed et aliarum gentium penè omnes homines, præsertim virtutis rationem habentium, imbutos esse harum legum veneratione."—Ibid., p. 131, lib. 2, *de Mosis vitâ.*

Again . . . "omne suum decus et auctoritatem a lege Mosaicâ mutuari, non secùs atque Luna et stellæ splendorem suum a Sole."—Ibid., p. 121.

[x] See before, p. 7, &c.

of the past, but affects the Christian also, the Jurist as well as the Theologian, of the present day. And the Book of Joshua should be added to the Pentateuch, because the Jews have long been accustomed to consider that Book as a part of the Law, on the ground, that the former was thought more closely connected with the latter than the other portions of Scripture, and that not simply because Joshua himself has been held to be the author of the latter verses of the Book of Deuteronomy, but because they maintained, that if the one portion in the Law [y] contemplated the division of the promised Land amongst the several Tribes, the Book of Joshua recited its accomplishment.

God's promises in connection with the Law.

Now there are two ways in which the Law more especially affected the Israelites [z], viz., as individuals, and as members of a great community; and so in the manifold relationship which, as individuals, they held towards each other. At the same time, we may add, *both* considerations had the like tendency to separate the Israelites from all other nations on the face of the earth. Which, again, comprehended the past as well as the future. The former, in that there was to be an exact fulfilment of the promise that was made

[y] The following is quoted from the Talmud :—

"If Israel had not sinned, they would have had no other Scriptures than חמשה חומשי תורה the five-fifths of the law (the Pentateuch) and the Book of Joshua, which last is indispensable, because therein is recorded how the land was distributed among the sons of Israel, but the reminder was added, 'Because in much wisdom is much grief.'" (Eccles. i. 18.)—*Nedarim*, fol. 22; *Hershon's Talmudic Miscellany*, p. 86.

"The last eight verses of the Law (תורה) were writen by Joshua."—*Bava Bathra*, fol. 14, c. 1.

There is a touching story in this very same tract, fol. 15, c. 1. . . . to the effect, that Moses himself wrote the verses which record his own death at the dictation of the Almighty. The account literally rendered is, "The Holy One, blessed be He," (the guarded and holy mode of expression in the use of the great Name!) "spake, and Moses wrote in tears," ומשה כתב בדמע.—*Hershon*, p. 122.

[z] We may add to all that has preceded, that "the very literature of the Jews was thenceforth (after Malachi) visibly coloured by the spirit of the Law. Even Ezekiel, living in the earlier period of the Babylonian exile, described the ideal priesthood of the future, on the whole, in harmony with the precepts of the Pentateuch." (Ezek. xliv. 15—31.)—*Kalisch*, p. 653.

in God's first covenant with Abraham, and with his seed after him. "As for Me," says the Almighty unto Abraham, "Behold, My covenant is *with thee*, and thou shalt be a father of many Nations." "Neither shall thy name any more be called Abram, but thy name shall be called Abraham, and a father of many nations have I made thee. . . . And I will establish My covenant between Me and thee and thy seed after thee, in their generations for an everlasting covenant, to be a God unto thee, and thy seed after thee." The same promise was renewed as anticipating the giving of the Law, when God said unto Moses, "Draw not nigh hither; put off thy shoes from off thy feet; for the place whereon thou standest is holy ground." Moreover, He said, "I am the God of Abraham, the God of Isaac, and the God of Jacob. And Moses hid his face; for he was afraid to look upon God."

Again, touching the promise, when troubles arose after the giving of the Law, Moses pleaded with the Lord, that He, the Lord, might remember whose they were, and for whom, as a people, they had been begotten, even Abraham, Isaac, and Jacob, and to Whom said Moses, "Thou swearest by Thine own Self, and saidst unto them, I will multiply your seed as the stars of heaven, and all the land I have spoken of will I give unto your seed; and they shall inherit it for ever."

The Jews a Holy Nation.

Now this distinctiveness as a people was invested with a peculiar character[a], in that not only should they have a separate body of men consecrated for the Sacerdotal office, but that they themselves, as a people, should for ever be invested with a sacerdotal

[a] "The Hebrews stood, under the guidance of Jehovah, the Holy One, not merely in the manner of the other nations; for they had, by His mercy and power, been released from Ægyptian thraldom; He was, therefore, *their* God, in a peculiar and special sense. He had made them a nation and preserved them amidst dangers, that 'He might be their God;' and He had 'borne them on eagles' wings,' and brought them to Himself. (Exod. xix. 4.) Thus, there was a close, almost a personal, relation between God and Israel. (2 Sam. vii. 23.) It originated by an election through God's grace, and was ratified by a mutual covenant. 'Ye shall be holy, for I am holy,' this is the pith and kernel of the intellectual labour of many centuries, it is the ripened fruit of a long spiritual education."—*Kalisch*, p. 108.

title, and all because, when God by His many deliverances and mercies had made the Israelites peculiarly His own, they had also become His people in a strict and special sense: "Now, therefore," says God, "if ye will obey My voice indeed, and keep My covenant, then shall ye be a *peculiar treasure* unto Me, above all people; for all the earth is Mine." "And ye shall be unto Me a *kingdom of priests* and a holy nation. These are the words which thou shalt speak unto the children of Israel."

But observe, this enlargement of the idea did not interfere with, or invalidate, the peculiar office of those to whom, in a still more *direct* sense, the duties of the Priesthood were assigned. And yet, if I may so speak in modern language, the term is applied to the Lay as well as the Clerical element, amongst the people. Nevertheless, why should we speak of the expression as modern? Since, as a modern expression, we are simply giving back to the past what is really its own.

The division of the Land of Canaan, the distinctiveness of the Priestly office, the distribution of the Levites, the duties and privileges belonging to them, may be called so many reminders to a body of men. Their lot, if I may so speak, "had been cast with the Lord [b]," or, in other words, that the Lord Himself, for His own glory, and the good of others, was the "lot of their inheritance." It is Christianity that has borrowed the idea. And St. Peter applies it in the comprehensiveness of its meaning, when he addresses his own converts, who had probably been drawn from the Jewish race: "Ye are a chosen generation, a *royal priesthood,* an holy nation, a peculiar people [c]"—

[b] Clergy as distinct from the laity, from "κλῆρος quia de sorte Domini erant, vel quia Dominus est sors eorum, as Papias hath it."—*Ridley.*

Or again, the Christian ministry, the clergy, were called κλῆρος, lit. a lot, a portion, because the clerical office was first assigned by lot; cp. Acts i. 26. See Lightfoot, Philippians, p. 245.

[c] Nevertheless, with the Jews, the Priests formed a kind of aristocratic caste. And the word כֹּהֵן assumed, in the kindred dialects, the meaning of prince or noble.

St. John, in the Apocalypse, combines the two ideas, "And hath made us kings and priests unto God and His Father," &c. (c. i. 6.)

(some of which are very closely allied to the words addressed to the Israelites in the wilderness)—"that ye should shew forth the praises of Him who hath called you out of darkness into His marvellous light."

And again, whilst almost in more striking language, does the Apostle speak, reverting to the people of Israel, "Ye also as lively stones," i.e., stones of life, "are built up a spiritual house, an *Holy Priesthood*, to offer up spiritual sacrifices, acceptable to God by Christ Jesus." Wherefore, also, it is contained in Scripture, "Behold, I lay in Sion a chief corner-stone, elect, precious, and he that believeth on Him shall not be confounded."

The Priesthood under the Law.

But yet, in a third sense, is the expression applied—restricted, no doubt, because used apart from the great body of the people; but although so used of a portion of the Lay-element, there is no encroachment upon the real sacerdotal order. In other words, it serves the part of the links of a chain to connect the two extremes together, whilst it impresses the holders of the highest offices of the State with a sense of their responsibilities—being none the less because thus stamped with the impress of a Divine character. This readily explains the apparent difficulty in the Book of Psalms, where the writer, in classifying the three Old Testament worthies, viz., Moses, Aaron, and Samuel, puts the two first together as "*Priests*," and "Samuel amongst them who call upon the Name of the Lord." The history tells us, that Moses made over to Aaron and his family *all* the privileges and responsibilities of the Priesthood, whilst reserving for himself only the offices of a Ruler and a Legislator. And elsewhere the historian enters even into particulars, when condign punishment was inflicted upon Korah and his company, the stern reproach of Moses to the transgressors being, "And seek ye the priesthood also?"

There is the fact, however, not only that all who were appointed to a public office were anointed in a similar way, the oil being the seal of the election,

a custom we retain, in Coronations, even to the present day. And we must take into account besides, that the word translated 'Priest' which creates the difficulty (כֹּהֵן), in its primary sense, is applied to those who minister to a King[d]. And who was virtually the King of Israel? It will be enough to add, what Moses himself, as God's representative, was delegated to tell the congregation, "Ye shall be unto *Me* a kingdom of Priests, and an holy nation," (Exod. xix. 6). To shew, then, the close connection between the political and ecclesiastical element, it has been a favourite argument, that, under the Old Economy, two brothers[e] were selected to superintend the two departments, at the rise of the Jewish State. It declared the natural connection between the two. And further, it was intended as a living principle for all generations to come, that the one should mutually have help of the other. In other words, that it ought to be as difficult to say, a Brother is not a Brother, as to affirm that the State and the religion of a people have no sympathy in common!

[d] Cf. 2 Sam. viii. 18, where David's sons are spoken of as 'chief rulers.' The Hebrew word being identical with the one commonly rendered 'priest.' However, the Cambridge Arabic professor (Rev. W. R. Smith) says the Hebrew word means 'priests,' and can mean nothing else. *Old Testament in Jewish Church*, p. 265.

The words in the original are בְּנֵי דָוִד כֹּהֲנִים הָיוּ, from a root meaning 'to stand, to stand upright,' (in order to minister); with this cf. 1 Chron. xviii. 17, . . . "primi ad manum Regis." Cp. the significant expression ἑστηκώς, Heb. x. 11. Hence uncertainty whether Poti-pherah and Jethro, the former the father-in-law of Joseph, the latter, of Moses, were ecclesiastical persons, or not, which our translators have expressed by calling them 'Priests' in the text, and 'Princes' in the margin.

[e] "Deus enim, quando Mosen reipublicæ, et Aaronem Sacrorum in populo suo Antistites, fratres germanos esse voluit, documento testatum fecit, ordinem politicum et ecclesiasticum in regni sui administratione, conjunctissimum, et instar fratrum, animis, voluntate, et studiis unitissimis utrosque esse, mutuosque sibi, pro vocationis cujusque ratione, operas tradere debere." —*Zepper*, *Pref.*, p. 11.

St. Paul uses a stronger argument when pleading that there should be no schism in the body. In the preceding remarks the union is based upon the natural connection of two bodies. But the Apostle takes for his illustration the still closer union of the various limbs in one natural body. See Kalisch, *Comment. in Leviticus*, p. 653.

The Sanhedrin, its History, and Jurisdiction, Appellate and Legislative.

But this will become more apparent when we view the practical details of the two principles as they affected the community. In the Sanhedrim, or rather, to be more correct, in the Sanhedrin[f], which we may call the great Council of the nation, there was, in some respects, an union of the two.

It will not be necessary to enter into the controversial part of the question as to the time when this Institution was, virtually, established. Some confidently assert it is traceable to the time of Moses—that when he, under the direction of God, appointed seventy Elders from among the Congregation for the purpose of assisting him in the administration of public affairs, this was neither more nor less than the very Institution which appeared in their subsequent history—being, as it were, the natural out-

[f] Sanhedrim, or rather Sanhedrin, was the chief tribunal of the Jews. There was the greater Sanhedrin, and the lesser. That there were legal courts in the early times of their history is plain from Scripture; but that these were identical with the Sanhedrin of the New Testament is merely a Jewish conjecture. The Mishna (Sanhedr. i. 16) connects the institution of it with Numb. xi. 16. There may be a reference to this last-named court in Deut. xvii. 8. But the term is not Hebrew, it is a corruption of the Greek *συνέδριον*, a council, a local court. The word does not appear in the Hebrew Old Testament at all, though in the LXX. we meet with it. In the Targum, as might be expected, the word often occurs. In the New Testament, and especially in St. John's Gospel, the members of the Sanhedrin are called *Ἰουδαῖοι*, and occasionally *φαρισαῖοι*. In Acts of Apostles v. 21, we read of *τὸ συνέδριον καὶ πᾶσα ἡ γερουσία*. In all these passages, probably, the greater Sanhedrin is alluded to. See Hatch, B. L., p. 60.

The Greek name would warrant the hypothesis that the Sanhedrin was not instituted till after the building of the Second Temple, and at a time when the Greek language was so familiar to the Jews, that it was more natural for them to clothe a Greek word with Hebrew letters than to use the Hebrew words בית דין הגדול. With regard to the term, in respect of historical and philosophical research, much remains to be done. Maimonides (who lived in the twelfth century) in his treatise, *De Synedriis et Pœnis*, speaks frequently of הבית דין, the old Rabbinical term, but does he ever use the Græcized form? When speaking of the qualifications of the members of the court, he uses his own phraseology

היושבים כולם שם בבית דין הלבורי חכמים וראין.

Cf. Jackson's Works, vol. iii. cap. xii. p. 457; also Milman's Hist. Jew., vol. ii. p. 107.

growth of the very tree that was planted in the wilderness. Of course, the Jews themselves maintain the opinion, in their eagerness to give the weight of antiquity to that important body, and to connect it with the direct inspiration of the Almighty. On the other hand, it is held by some, and not without grounds for the statement, that the real history of the Sanhedrin did not commence till after the return of the people from the Babylonish Captivity. Those who hold this view, point out that the term 'Sanhedrin' is not of Hebrew, but Greek origin. And this, therefore, would seem to coincide with a still later date, viz., in connection with the Greek rule through the Macedonian monarchy.

Still, when we recollect the number of members of which the Court was composed, the number in both cases being very nearly the same—whether we put the date early, or later as is supposed more probable,—it is evident, that the framers of the institution bore in mind what had taken place in the wilderness, and that, as far as they could, effected some resemblance between the two. Moses speaks simply of the selection of Elders for the office, which term may designate the age of the members, and not the professional condition. Whilst afterwards, in history, it is clear, that both clerical and lay elements were present as component parts. The Ecclesiastical was represented by the priesthood, the Secular by the Scribes, who, coming after the prophets and succeeding them in position, were clearly the Lawyers, or Law-expounders of the day.

The Sanhedrin, as has been remarked, was the Supreme Court of the nation; and its sittings were held in Jerusalem—either for the hearing of its own special cases, or those which were brought before it on Appeal. The same has been called the "Parliament of the Nation;" and disregard of its authority was, in point of fact, a political crime, amounting to high treason. Moreover, in the case of one being convicted of such an offence, the execution of the sentence could only take place at Jerusalem, and that only at the celebration of one of the three great Fes-

tivals, notwithstanding that the offence itself might have been committed elsewhere. This was done, partly, to give importance to the act, and partly, because at that time were assembled *all* the males from every part of Judæa. This was in strict accordance with the letter which had been laid down amongst the ordinances of Moses. "The man that will do presumptuously, and will not hearken unto the Priest, even that man shall die; and thou shalt put away the evil from Israel." "And all the people *shall hear, and fear, and do no more presumptuously*."

The Head, or President of the Court, was styled a Prince (נָשִׂיא), and the Vice-President, "the Father of the House of Judgment." Now, the rest of the members composing the Court have created a little difficulty as to the precise number, the doubt being, whether they were 70, 71, or 72. If either of the latter, probably the first number would be employed to designate the same. When in Session, they sat in a semi-circle with the Prince or President in the centre[g], in order that he might have a complete view of the individual members. And should any difference of opinion arise, the votes were taken by two assessors, and the judgment was settled by the majority. Probably, the unwieldiness of the number might suggest itself as a difficulty to some minds. But then, we must remember, that, although acting as Judges, they were simply a Jury, with the additional advantage, that each man was possessed of a knowledge of the Law, each man being educated, as we shall see, for the purpose, so much so, that, without this knowledge[h], no man,

The President and Members of the Sanhedrin.

[g] Compare the account given by Selvagg. of the primitive synod, "The Bishop sat with the presbyters as a magistrate with his assessors." This will be alluded to elsewhere in our remarks upon the early Christian Church.

[h] "Again, with respect to the illiterate man, he was marked in many ways. 'No testimony is to be borne to them, none is to be accepted from them, no secret is to be disclosed to them; they are not to be appointed guardians over orphans, nor keepers of the charity-box; and there was to be no fellowship with them when on a journey.' To describe such, they would, as already remarked, use the expression עם הארץ, 'people of the land, i.e. heathen' —the term, there is reason to believe, being originally applied to the primitive inhabitants of Canaan, traces of whom may still be found among the fellahin of

whether Lay or Cleric, could be admitted to sit in judgment in the Assembly. Only the requirement was made still more stringent in the case of a Priest. Ignorance here was attended with punishment in the shape of a fine. Moreover, in the preceding instance, when we speak of Law, it is to be understood to include both branches of "Civil" and "Ecclesiastical." And an inquirer, like Mr. Benny, would add *political* also.

But though the modern term 'Parliament' has been borrowed to describe this highest Court of the Jews, it is rather of its judicial character that we are speaking, and therefore would borrow the technical expression of their own language as a '*House of Judgment*.' For, in this particular, it superseded every other authority, the king[i] himself (when the country came under royal rule) having but limited power to settle matters, as between man and man, of a judicial character—a mode of dispensing justice which was peculiar to this people. In its last days, the judgments given were always acquiesced in, because they were supposed to be given with the greatest care, and under the influence of the highest knowledge, coupled with a sense of the strictest impartiality and justice.

Election of the Members of the Sanhedrin.

Moreover, that august body[j] partook of a representative character, in consequence of the mode by which its members were elected. Besides the Court of seventy, there were in Jerusalem *two*

Syria. They appear like the aboriginal races, in many countries of Christendom, in relation to Christianity, to have remained generation after generation obdurately inaccessible to Jewish ideas, and so to have given name to the *ignorant* and untaught generally." For more on the point, see *Hershon's Talmud. Miscellany*, pp. 17, 91, 204, notes.

With regard to this ignorance of law, בּלי חכם was something like an equivalent to the foregoing עם הארץ.

[i] But there was another reason alleged besides the one mentioned in the text, "Sed nec *rex* admittebatur in Sanhedrin, eò quòd prohibitus sit contendere cum eo. Sacerdos verò Magnus recipiebatur, modò sapientiâ præditus esset."—*Fagius* in cap. xvi., Deut.; quoted also by Jackson.

[j] There is, however, a good deal of obscurity with regard to details in this matter. Those who wish to go more fully into the question will do well to consult Milman, as above.

other Courts of a similar, but less dignified, grade. And to fill up the vacancies occurring in the first, those were selected from the others, who had approved themselves as the most eligible for *wisdom*, *knowledge*, and *modesty*. This, or something like this, was the regular testimonial, if one may express the idea in modern words. Hence the best experience as well as the highest educational training were reserved for the Supreme Court, the power of selection being in the hands of the people. The object was, to get rid of all nepotism, self-seeking, or undue bias towards the interests of individuals.

Various kinds of Jewish Law, including Equity.

Of the judicial laws of the Jews, some belonged to the Jews peculiarly, as being connected with their Ceremonial Law, e.g., the punishment of him who had touched a dead body; others concerned the Jewish Commonwealth, as, for instance, in the matter affecting the year of Jubilee. The rest were laws of common justice and equity, belonging to the Moral Law, principally grounded upon the Law of Nature, as declared by God Himself. So these judicial laws, called by Moses "judgments," flowed from the same fountain. A judicial law may be a law of common Equity, and therefore known from other judicial laws, which did only bind the Jews in the land of Canaan.

In connection with Greek jurisprudence, we have already spoken of the principles of Equity [k], which has been called *a correction of the written Law*. So here the same may be said of its earlier existence with the people of Israel, and which could not be derived, probably, from any other nation.

Courts of First Instance, or Appeal.

Certainly, every care was taken that a just judgment should be arrived at, and still further, we shall see, through the excellent public administration of national affairs, justice may be said to have been brought to every man's door, if a man chose to remain satisfied with the decision. For when an Israelite, in the commencement of a dispute, had a question to

[k] See before, p. 49, &c.

propose, he inquired *first* of the Court in his own city; and if they understood the case, and the decision proved satisfactory to both parties, there was an end of the question.

But if not, the litigant applied to the Court of the next city; and if this did not satisfy, the parties went together to the capital-city of Jerusalem, and laid the points in debate before that Court, which held its Session at the entrance of the Temple mount. And if matters could not be settled there, then, as a last Appeal[l], all was referred to the Supreme Court of the Seventy[m], when the dispute, after examination and discussion, was finally adjudicated upon, by a majority of votes.

At first sight, this last may appear to some a clumsy and unsatisfactory mode of dealing with such problems, viz., that justice should be made to depend upon a majority of votes. The answer may be urged, that minorities are sometimes right, whilst the majority may be wrong. But then, as a safeguard, it is but fair to add, that these Judges, in the aggregate, as has been already stated, formed a kind of Jury, with whom the decision was made to rest, and further, that each member was fully acquainted with the mode of procedure and the intricacies of the Law; men, therefore, they were, trained by education, and with the experience gained in the procedure of the inferior Courts, before they could be elected into the chamber of the Supreme Court. Moreover, it was an established rule with them, that a controversy about the smallest matter should receive the like care and attention as the most important.

[l] Compare the number of Appeals in Ecclesiastical cases as provided by the Statute of Henry VIII.

[m] See *Hershon's Talmudic Miscellany*, p. 199.

In many of these details, I must here, once for all, express my obligations to Messrs. Benny and Hershon's works, lately published. The former gives a lucid and interesting insight into many of the legal peculiarities of the Jewish system; the latter, a lucid and able digest of the Talmud. Both books are able and interesting, and give an account of the old legal system of the Jews, as the same became developed in succeeding generations.

High qualifications required even in a witness.

Again, to touch upon another point, if an '*ignoramus*' became ineligible as a witness in a case, much less would such an one be elevated to the position of having to give a legal judgment upon a fellow-citizen. Nay, we may take safely a still higher standard. We are told, "Whosoever is not instructed[n] in the Scriptures, in the Mishna, i.e. the rabbinical or authorized interpretation of the Scriptures, and secondly, whoever is not instructed also in *good manners*—in both cases, or in either case, the same is not qualified to act as a witness[o]." *A fortiori*, such an one could not act as a Judge. Indeed, there was a reminder given even to those whose duty it was to examine a witness, as shewing the duty of perfect self-control, "Be careful[p] with thy words, lest from them *they learn to lie*[q]." Only the question faces us, What could have been the means used for attaining to such excellence in the administration of some of the gravest problems of common life? It is easy to make the requirements, sometimes easier than to gain the accomplishment of them!

Education general and legal.

The evidence, however, is abundant that, at certain periods of Jewish history, a high regard was paid to *education*[r] of every kind, through the length and breadth of the land. Allusion has been already made to the reign of Hezekiah, as to what was done to give a healthier and higher tone to the people.

[n] The saying of Rabbi Yochanan, quoted by Hershon, p. 205.

[o] It was a general principle in early law to admit only the testimony of people who were considered trustworthy. The modern principle is, not to reject a witness on account of his interest in the suit, or his bad character, but to give less weight to his evidence.

[p] Shimon ben Shetach says:—

"Fully examine the witnesses, be careful with thy words, lest from them they learn to lie."

[q] This seems to resemble the English rule against asking "leading questions."

[r] "We may remark that stupidity of intellect is not confined to any particular age of the world. With regard to teaching under such circumstances, the Jews inculcated the lesson of patience and almost catechetical repetition. A master is bound to rehearse a lesson to his pupil four times."—Quoted out of the *Talmud* by Hershon, p. 73.

But then *this* was a time of public reformation—the very idea suggesting how much the preceding condition of the nation had declined. Still, at a subsequent period, the advantages of education could hardly be estimated more. And touching the effects of education, they must have been thought very comprehensive; and I only quote the passage because its spirit is Jewish, that education "*is made to serve the interests of the possessor*," according to the Talmud, "*as to both worlds*." Once more, to use the Israelitish[s] illustrations, when comparing the possession of it by the standard of money, it is alleged, "a man has the enjoyment of *interest* here, whilst the *principal* remains *untouched*, to meet the exigencies of the world to come."

Jewish Commendations of the Study of the Law.

Undoubtedly, there was one special topic of instruction, which was held to surpass every other study, and that was *the study of the Law*.

It may be worth while, however, first to glance at some few other branches of knowledge, as giving us a little insight into particulars connected with their private as well as public life.

What do we think of the following catalogue of subjects which were worthy of being observed, and which, as duties, were to be impressed upon the minds of others? They are the "honouring of father and mother," "acts of benevolence," "hospitality to strangers," "visiting the sick," "devotion in prayer," "promotion of peace" between man and man, "study in general;" *but the study of the Law outweighs them all*[t].

Is there nothing here, even, for Christians to consider? Or dare we say that such sentiments are worn out, worthy

[s] Mr. Benny goes beyond this, but I may quote his words:—

"A Jew could not but be well-acquainted with the principles of his legal Code. He was, in fact, competent to decide, much as our Justice of the peace is, any ordinary infractions of the law likely to occur in his own district."—*Criminal Code of the Jews*, p. 33.

[t] To quote the words of the Talmud once more:—

"'Let us hear the conclusion of the whole matter,' (Eccles. xii. 13). Thou shalt ever hear the law, even when thou dost not understand it. 'Fear God,' and give thy heart to Him, 'and keep His commandments;' for on account of the law the whole world was created, that the world should study it."

enough of the times referred to, but obsolete in respect to ourselves who are living in the nineteenth century of the Christian era?

"The study of the Law," it is said again, "is of greater merit to rescue us from accidental death, than the building the Temple, than honouring father and mother." But why this constant repetition of the Law? and the making everything, even that glorious pile, which at Jerusalem for generations and generations was the pride and glory of every child of Abraham, subordinate to the study of the Law? At least we are reminded, as Christians, that God's revelation takes precedence of everything, and that education, and science itself in the technical use of the term, in all its comprehensive vastness, can only base its theories upon *the foundation of God's Word!*

The wisdom of Solomon.

But suppose, with the eye of a Jew, we look at the comprehensiveness of human knowledge. It is said of Solomon, that "he spake three thousand proverbs." "And he spake of trees from the cedar that is in Lebanon, even unto the hyssop that springeth out of the wall: he spake also of beasts, and of fowls, and of creeping things, and of fishes." But in answer we may be reminded, that the example of Solomon was a special one, that he was "inspired" in more than in an ordinary sense of the word, and that, from his own day to this, he stands out, in the portraiture of the world, as "the wisest amongst men."

Hillel and other teachers.

But passing rapidly to succeeding generations, "the venerable Hillel[u]" is said to have had eighty disciples, thirty of whom were counted worthy that the 'Shechinah' should rest upon them, as it rested upon Moses, our Rabbi; and thirty of them were worthy that the Sun should stand still as it did for Joshua; and twenty of them stood midway in worth." And it is reported of another, "that he did not leave unstudied the Bible[v],

[u] Again, of Hillel it is said with regard to his pupils,—"That they were acquainted with every branch of science *known at that time*, especially in medicine and astronomy."—*Benny*, p. 39.

[v] "The Rabbins were well grounded in physiology, pathology, and such modes of chemical and organic analysis as were then understood. Thus we

the Mishna, and the Gemara, the constitutions, the legends, the minutiæ of the Law, the logical niceties of the Scribes, the arguments '*à fortiori*,' and 'from similar premisses,' the theory of the changes of the moon," &c. The services of an interpreter were never allowed in court. The Judges were bound, therefore, to be acquainted with the speech [x] of the neighbouring nations.

Now if, for a moment, we compare what was done amongst the Israelites for the education of the people in towns generally, with what has been done by ourselves in modern days, we shall find much to surprise us, and perhaps something which might remind us that we have been less zealous as to some subjects of general instruction, and therefore less 'progressive' in the best sense of the word.

Compulsory education in Israel.

It is only very lately that English people have been accustomed to hear of '*school-boards*' and '*compulsory* education.' Such terms, a few years ago, would have sounded, and did sound, strange amid the conflicts of Parliamentary and political life. Yet both were well known amongst the Jews, after their return from the Babylonish captivity. The name of the Founder of Compulsory Education lives, in the Talmudical records, as Joshua, the son of Gamala. And it is noteworthy, that if in modern days the Church of England long felt her weakness when struggling to fulfil this part of her mission, with the Jews of old there was a Law strong enough to *compel every child* who was more than six years old to attend a communal school, the only exception being, where an equally good education was being supplied to the child at home. 'Colleges,' 'academies,'

find Rabbi Ismael and his pupils engaged in dissection, in order to study the anatomy of the human frame."—*Benny's Criminal Code of the Jews*, *p.* 38.

To speak briefly of the 'Mishna' and the 'Gemara;' the former may be said to be the received 'Commentary' upon the Bible; the latter, as the accepted 'Commentary' upon the Mishna.

[x] To quote the words of an author already alluded to, Milman says that the Court of the Sanhedrin consisted of seventy-one persons, partly Priests, partly Levites, and partly Elders. Some have added, fancifully, that being seventy, they must, each of them, understand seventy languages!

and 'high-schools' were all terms familiar enough to this practical people; and as institutions, many of them existed in Jerusalem. Besides, what many, in modern days, began slowly to recognize as a defect in some of our Public Schools, viz. that the number of teachers was not in proportion to the number of those who were to be taught, such an evil the Jews had guarded against long ago, regulations having been laid down, on this point, as to the number [y] of teachers engaged, even in an elementary school. The rule was [z], that in no case should the number of pupils exceed twenty-five for one teacher in primary instruction; that there should be an assistant appointed, if the scholars reached forty in number; and if fifty, then there should be two competent teachers. In short, so great was the importance attached to the education of the young, that portions of the Talmud enter into the most minute details upon the topic, discussing whether it is better to teach much superficially, or little in conjunction with the full understanding of the same.

Bible-teaching in Israel.

One thing especially insisted upon was, that *their Scriptures* should be *a Class-book* with all [a]. Their Bible was the primer and reading-book. Its laws and traditions were almost as well known to the scholar as his own existence. And in riper years, when the work of the day was over, there were evening schools provided, after the hours of labour, for the exposition of Scripture. On the second and fifth days of the week [b] the custom was to go to the nearest town as well as on the Sabbath and the Festivals; and there, again, we hear of public reading, with a regular exposition of the Law.

The result was to the Jew a religious and legal edu-

[y] The fact was, the Jews viewed the profession as one charged with high and heavy responsibilities, not merely as a means for making money.

[z] Hershon, *Talm. Misc.*, p. 179.

[a] We thought we had done a good deal when the clergy of the Church of England established night-schools in their country parishes. This is quite correct; only, it seems, they were anticipated in the idea by the people in Judæa, centuries and centuries ago. With the latter, education came first, and labour afterwards. With us, as a people, labour came first; and as for education, the night was used, because the day was otherwise disposed of.

[b] i.e. Monday and Thursday, the usual market-days.

cation (the *two were supposed to go together*) *for every one.* As already intimated, an ordinary citizen was fully competent to give an opinion upon a common point of law—at least, he was acquainted with many of its principles and some of its proceedings, and could tell, if required, what to do in the process of a prosecution, or a defence. Perhaps the simple knowledge, without assigning any other reason, might become an useful instrument for inculcating a spirit of obedience to the Laws of the land?

At least, to speak summarily upon the point, if we have before remarked of Greek Jurisprudence, that the Greek Priest was always trained in matters connected with his own vocation, with a knowledge of temple-building besides; so here it might be said, that every Jew was educated for being a Lawyer. And still more, with the Jews, if a Priest were ignorant, he was mulcted for the want of education, as already remarked.

Belief in God the mainspring of Jewish life.

Now the religious education of the Jew affected his domestic as well as his public life. One great truth was instilled very early—it was never thought too early—viz., *the existence of Almighty God.* This was the foundation upon which every other doctrine, i.e. every other part of the superstructure *must rest*, if of the Jew, shall we not say *à fortiori* with the Christian?

But if the beginning, the same also was considered the end of all moral as well as religious teaching. With the Jew it was a topic, indeed, whereupon, in after life, and every year of life, the most profound philosophic meditation (to borrow the language of Maimonides) could exercise itself. In such a study, the Jews used an extraordinary, but very beautiful, expression. "There were five things," they affirmed, "wherein their institutions were technically said to be in the garden, or (הפרדס) Paradise," viz., 1. "To know that there is a God." 2. "To ignore any other besides God." 3. "To feel God's unity." 4. "To love God's person." 5. "To stand in awe of God's Majesty."

We have spoken of every year of life. The idea may

be brought still closer to ourselves, and we may affirm that the topic embraced the daily intercourse of life; for every day the Jew, individually, had to recite his "Shemoneh Esreh," or eighteen blessings [c].

It is not needful for a Christian to commend the practice unduly. Still, in past generations, under the older economy, the custom might have acted upon many minds as a reminder, that their duty was not to do evil, but to do good, to each other, and all around. And which, to say the least, however formal we may deem the habit, is better than wishing no blessings at all. It is, certainly, better than to imagine that the pivot around which the world turns is *self*, and *only self*, and can fairly challenge comparison with what a great [d] poetical genius of modern times could suggest to "men of thought," through one of his characters, that, as a duty in the daily routine they were to hear "a little song," "read a good poem," "study a fine picture," and, though last, not least, "they were to speak, if possible, a few sensible words."

Tendency of Jewish law towards "mercy" in criminal cases.

Moreover, it may be remarked, that the tendency of Jewish legislation, however much it may have degenerated in after times, leaned most frequently to the side of *mercy*, if we compare a heavy criminal case with an ordinary civil one. The latter could be settled by three Judges. But the other, when it was a question of life or death, had to be argued before twenty-three Judges. Besides, during the trial, the requirements of proofs were so many, that every difficulty was interposed to prevent a hasty, or

[c] The eighteen were the usual blessings. Elsewhere we are told that a man is bound to repeat every day one hundred blessings. Menachoth, fol. 43, col. 2.

This duty, as Rashi tells us, is based upon Deut. x. 12, altering the word מה (what) into מאה (a hundred). And from the Talmud we learn the curious fact, that the text counts one hundred letters. Note, p. 218, Hershon.

[d] Goëthe makes Serlo, in his *Meister*, lay down a rule, which should be observed daily: "One," he says, "ought every day to read a good poem," "see a fine picture," and, if possible, "speak a few sensible words."

The author of the note asks for our opinion as to which gives the better advice, the ancient Talmud, or the modern poet? Most Christian people would have no difficulty in judging which is the best! Hershon, p. 218, note.

unjust, judgment, when a human life was concerned. There was a cycle of seven questions *always* put. And he that could question most, was commended most, as carrying out, not only in the spirit, but in the letter, what had been declared: "Thou shalt inquire, and make search, and ask diligently, and behold, if it be truth, and the thing certain, that such abomination is wrought among you," (Deut. xiii. 14), then, and then only, shall the judgment be pronounced.

On the other hand, very severe was the punishment upon the false swearers, and more especially in a criminal case: "He who swears falsely in this world is never accepted as a witness *again* [e]." But if he has perjured himself in a civil case only, his evidence may be relied upon where life and death are concerned. And further, by way of terrifying a delinquent, it was ruled, "that the same punishment may be inflicted *upon the false swearer* which would have been inflicted if the testimony had been true."

But suppose that the result is, that the accused is found guilty of a *capital* offence, and that such an one must forfeit his life, the matter did not rest here. To gain delay, fresh issues might be raised upon the whole question, till, at last, all is fruitless. But even then [f], the Judge, who had pronounced the sentence, was required by Law to make, for himself, the day of execution into a day of sorrow and mourning. And the reason assigned is worthy of remark. It is not, simply, that an Israelite had been removed from among the congregation in suffering the penalty of the Law, but because *a human* body, so *condemned* to die, had *once borne*, like all others, the *image and likeness of his Maker*—a feeling which did not

[e] Compare the "Cañon" Law.

[f] "It is evident that the primary object of the Hebrew Judicial system was, to render the conviction of an innocent person *impossible*. And the Jewish Legalists used their greatest ingenuity to gain this end. A person could speak in his own defence.

"Hearsay and presumptive evidence was rejected as of small value, circumstantial evidence was inadmissable. The Jewish lawyers held fast by the Mosaic injunction, that two credible witnesses, or more, were required in every case."—*Benny*, p. 64.

end there. For, that no desecration should be offered to the corpse, it was further enacted, that, on the self-same day, before night-fall, that body should find its place of interment, to rest there.

The *lex talionis* explained by the Fathers.

There is but one point more we need to allude to, in connection with Jewish Law, and it is referred to here, because the subject will again meet us when we have to consider the provisions of Roman Law.

Our Blessed Lord, in the "Sermon on the Mount," shews how different His own Law of the Gospel would be, in the largeness of comprehensive charity, as compared with the Mosaic Code, which says "eye for eye," "tooth for tooth," "hand for hand," "foot for foot." Which words, in part, the Saviour quotes, without mentioning where, or by whom, it hath been said. The meaning of the passage, according to Tertullian, being, that the liberty of retaliation will act as a deterrent to the evil complained of. "Licentia retributionis prohibitio esset provocationis." Or, as the same writer says again, "That nothing better could happen to an individual offender than the probability of his suffering himself the very evil he would inflict upon another." St. Augustine interprets much in the same way, "that the law would not act as an incentive to revenge and passionate excitement, but a limitation to them which is just and right[g]." But which interpretation, in the perversion of human ideas, might easily be transformed, and probably was so transformed in the days of our Lord, into considering that retaliation is always just and right.

Again, it may be remarked of this passage, that the Saviour simply says, "Ye have heard that it hath been said," not even, as before, "Ye have heard that it hath been said by them of old time,"—still less does He say, It hath been said by Moses. Only, He quotes the principle which hath been of old, giving to the word a meaning of His own — a retaliation, no doubt, but not the

[g] "Vindictæ et furoris non fomes, sed limes, est justus."—Lib. xii. c. 25, contr. Faust: quoted in *Corn. a Lap. in loc.*, Exod. xxi. 25.

rendering evil for evil, but contrariwise, one of good for evil!

But then comes another question, without the Saviour's mentioning definitely the name of Moses, whether the principle, in its original shape, did really belong to the Mosaic Code at all, or whether it is merely a transfer of what had been the antecedent precept of other nations.

It is true, that this principle itself is to be found amongst the laws and ordinances which the great Lawgiver did promulgate to his people.

Silence of the Talmud as to the *lex talionis.*

But then, in addition to the silence of the name of Moses in the Scripture considered above, what adds weight to the argument on the other side is, that in no part of *the Talmud*, which enters so minutely into all the duties of public and private Jewish life, is the '*lex talionis*' to be found, and which, *à priori*, might be thought would have been the case, if the ordinary interpretation of the passage is the correct one.

Nevertheless, granting that the Pentateuch fully recognised the right of private vengeance, and that the family of the deceased could slay the culprit, it was no more than what all the ancient legal systems recognised—a change developing with some, that in the event of such a misadventure, a *money-payment* might be made the substitute.

But again, as an alleviation of both these acts, shall I say on the side of mercy? Moses provided an adjunct to the *lex talionis.*

Cities of Refuge.

Subsequently, certain "cities of refuge" were appointed, whither the accused could flee, and then be so far safe, that if he could reach one of them without interruption, he should at least be safe from the stroke of *sudden* vengeance[h].

[h] To go to Christian times, we may quote the following of St. Augustine, when in early life, in his Confessions, he thus speaks of his own experience:—

"Docebam in illis annis artem rhetoricam, et victoriosam loquacitatem, victus cupiditate, vendebam. Malebam tamen, Domine, Tu scis, bonos habere discipulos, sicut appellantur boni, et eos sine dolo docebam dolos, non quibus contra caput innocentis agerent, sed aliquando *pro capite nocentis.*" —*Confess.*, lib. iv. c. 2.

And besides, if innocent, he had the opportunity of having *his* part of the case examined afresh, whether for good or evil, by the proper competent authorities, the priestly element being there (and where should it be except on the side of innocence and mercy?) in conjunction with the legal and secular, in each one of these appointed cities. And what makes the legal provision the more remarkable is, that the six cities of refuge were not near together, but distant from each other, scattered throughout the country, central in position, as a legal safeguard for every part of the land, and made accessible by roads of easy communication. And one is almost led to imagine that this description is of one of our modern country roads, when we hear that "guide-posts" were put up to shew the way to the fugitive, and spare him the risk of *inquiring* during flight. The issue being, as though, if in judgment justice shall be dispensed, yet in mercy equity shall touch the balance, *where a human life is in jeopardy*[i].

Fall of Jewish nation caused by their perversion of Scripture.

Now with such a description of the Jewish Law (some of its more interesting and salient points have been selected), it may be a cause for wonder, how such a fabric should have fallen—in a way too in which our Lord predicted it would fall—when the foundations of the building had been so skilfully and marvellously laid by *the hands of the great Master-Builder himself*. For of Moses it is written, "He verily was faithful in all his house as a *servant*, only to do his Master's bidding!" But cannot the same thing be said of all God's dealings with the world, from the creation down to the latter days, when the end shall come? The saying never ceases to be true. The end of things differs from what you might expect at the beginning. The issue accords not with any pre-conceived notions of man's understanding. And it is not the less true because all stages of history bear along with them the fact of human responsibility!

[i] Compare with the cities of refuge the law of sanctuary, probably derived by us from that institution.

The first and great feature of Jewish legislation was that, as a nation, they should keep themselves from the idolatries of the nations round about them, whether the idolatry they had seen whilst sojourners in Egypt, or such as they had observed amongst those whose borders they had passed through, on their way to Canaan. The condition was, if they would be faithful to Jehovah as *their* Governor, although He really rules over all peoples and kingdoms of the earth, yet the promise to the Israelites specially was, that He would secure to them the blessings of *true religion* with *liberty*, *peace*, and *prosperity*, and that thus they would rise above all other nations, as a favoured people. One of the oldest of their Prophets[k] has very fully expressed the reason of the Hebrew constitutions, in that other idolatrous nations attributed their blessings to subordinate beings whom they worshipped, calling them, as if they really were, *supreme*. A mental condition it was into which the Israelites themselves, in times of degeneracy, could sink, and into which they sometimes did, as Jeremiah, the Prophet, declares.

In short, the constitution of the Hebrew government was, and was intended to be, *a standing confutation of idolatry*. And again, as a key of explanation upon this, and upon any other point which interfered with the permanent influence of the divine government, the Gospel-history of our Blessed Lord furnishes all that is needed. It is true, that He never upbraids them for the commission of idolatry. The temptation to this sin had, for generations probably, either in a great measure or altogether, passed away. And yet, notwithstanding the marvellous compassion of His divine nature, He was *constantly upbraiding* them, not only for that hardness of heart which

[k] "For their mother hath played the harlot; she that conceived them hath done shamefully: for she said, I will go after my lovers, that gave me my bread and water, my wool and my flax, mine oil and my drink." "For she did not know that *I* gave her corn, and wine, and oil, and multiplied her silver and gold, which they prepared for Baal." "Therefore will *I* return, and take away my corn in the time thereof, and my wine in the season thereof, and will recover my wool and my flax given to cover her nakedness." —Hosea ii. 5, 8, and 9.

resisted the power of divine truth, but because of all those glosses which had been suffered to gather around the sacred records, making void by traditions the very commandments of God! To understand this, we have only to look at the practical results which this "election" of Israel (if I may so speak) above all other peoples on the face of the earth, brought about, in the national conscience.

Isolation of the nation.

However true the special favour towards them might be, in *their* minds it takes the formal idea that the world was made *for them*, and for *themselves* only. "None," says the tradition, "are called the children of God *but* Israel,"—"none are beloved before God but Israel." The Scriptures say, "One generation passeth away, and another generation cometh, but the earth abideth for ever." (Eccles. i. 4.) But their paraphrase of the Scripture is, "One empire cometh, and another passeth away, *but Israel abideth for ever*[l]." The delusion was something extraordinary, for the opinion was not the outcome of ignorance or the obstinacy of individual minds, but the strange *perversion of the national conscience.* Hear again, "Whoso[m] destroyeth one soul of Israel, Scripture counts it to him as though he had *destroyed the whole world;* and whoso preserveth one soul of Israel, Scripture counts as though he had preserved *the whole of Israel.*"

One need scarcely add, this perversion of Scripture became almost habitual with them—interpreting, or rather twisting Scripture as might best suit the preconceived notions of their own delusions. "All Israelites[n]," say they, "have a portion in the world to come, as it is written in Is. lx. 21, And Thy people *are all righteous*—they shall inherit the land."

[l] The same kind of idea appears in the Book of Ecclesiasticus: "In the divisions of the nations of the whole earth, He set a ruler over every people, but Israel is the Lord's portion."—ch. xviii. 17.

[m] Sanhedrin, fol. 37, col. 1. Quoted by Hershon in his *Talmud. Misc.*, p. 6.

[n] *Talmudic Miscellany*, p. 38; Sanhedrin, fol. 90, col. 1.

Once more, another curious idea which they entertained, though easily accounted for, as a response to the previous key-note of this portion of their history, was, that when the resurrection-time comes (for it was only the cold rationalistic[o] Sadducees that denied the doctrine) their belief was, that the first appearance of it will commence *in the Holy Land.* An idea which lived on, and probably still continues to live. Hence it is, that besides all the natural feeling arising from old historical associations, or their expectations of the fulfilment of special prophecy, there exists the *hidden desire of returning to their own country*, it may be that, being there, they may awake, *when the first announcement of the event is proclaimed!*

Injustice of Jews in suits between Jew and Gentile.

The tendency of all this has been to foster a spirit of exclusiveness and national pride, which can see no duty except in that which affects themselves, and feel but little beyond the narrow precincts of Judæa. Even as to the Samaritans, the neighbours to whom they lived so near, for causes which we need not go into, they had no better word, than when they wished to speak bitterly of the Saviour, that He "was a Samaritan, and had a devil"—the Gospel throwing in, by the way, the additional observation, that "the Jews have no dealings with the Samaritans." Our Blessed Lord laid hold of the same fact, expressing it in the parable of the wayfarer who fell among thieves on his way to Jericho. And so graphic is the description that some have thought it is no parable at all, but something more than a mere resemblance, which a parable is, being the narrative of an actual fact. At all events, the word

[o] Little is said about the Sadducees in the Gospel. There were, probably, few of them in the villages of Galilee. In Jerusalem they would hardly fall in the way of a popular teacher. They dwelt aloof in their palaces, and were less frequently in places of common resort. Denying all punishment for crime in a future life, they were *severe*, in order to discourage delinquency in this. Their severity specially appears in the Christian history, with regard to the first Christians. The first persecution took place when the Sadducees were in possession of the priesthood, and probably formed a majority of the Sanhedrin. The High-Priest who put Jesus to death was probably a Sadducee.—*Milman's Hist.*, vol. ii.

"neighbour" had to be explained, in justice as well as in the comprehensiveness of its meaning. And this is not simply an individual case. For the whole spirit of the Jewish Law, as interpreted by themselves, shewed the same one-sidedness and partiality throughout, leaving the people to infer that the Gentile could do nothing right, whilst the Jew could do nothing wrong! And it is for this gross injustice and moral perversity that the Prophets, as the echo of a Higher Voice, from time to time, cried out so loudly, as well as for their lapsing into idolatry and forgetfulness of God.

Human nature only did what it always will do, *when left to* itself and *uncontrolled*. What can be more striking than the following, if tested by Christian, or even, in some instances, by heathen notions? "When an Israelite and Gentile[p] have a law-suit before thee, if thou canst, acquit the former according to the laws of Israel, and tell the latter, such is *our* law; if thou canst get him off in accordance with Gentile law, do so, and say to the plaintiff, such is *your* law: but if he cannot be acquitted according to either law, then . . . . bring forward adroit pretexts, and secure his acquittal." These are the words of Rabbi Ismael.

Rabbi Akava says, "No false pretext should be brought forward, because, if found out, the name of God would be blasphemed; but if there be no fear of that, then it may be adduced."

Again: "If one find lost property in a locality where the majority are Israelites, he is bound to proclaim it—but he is not bound to do so, if the majority be Gentiles."

[p] Quoted by Hershon, c. iii. 4, note f; Bava Kama, fol. 113.
By way of contrast, see what Juvenal says, Sat. viii. 80:—

"Ambiguæ si quando citabere testis
Incertæque rei, Phalaris licet imperet ut sis
Falsus, et admoto dictet perjuria tauro;
Summum crede nefas animam præferre pudori,
Et propter vitam vivendi perdere causas."

The Rabbinical saying was באו עליו בעקיפין, Veniunt ad eum per dolos. Bava Kama, fol. 113, col. 1.

Examples of unfair treatment of Gentiles.

Let us now take an incident which belongs to agricultural life, as laid down by the *great Law-giver himself*, who at times for the guidance of the people enters into minute details, anticipating what occasionally might occur in other experiences of every-day life. "If one man's ox hurt another's, that he die; then they shall sell the ox and divide the money of it; and the dead ox also shall they divide."

Nothing can be plainer, or more intelligible, one would think. And yet a difficulty has occurred, which has not been removed by our own translation.

Accepting the Talmudical[q] account given us, the complaint was once made, "We have carefully studied your Law, and find it equitable except in one particular." You say, "When the ox of an Israelite gores to death the ox of an alien, its owner is not liable to make compensation; but if the ox of an alien gore to death the ox of an Israelite, its owner must make full amends for the loss of the animal."

The question, therefore, turns upon another point, as to what is meant by an "alien," or "another," as we read it? the word "neighbour" being, after all, the closest translation of the original. So that if the word "neighbour" is understood as referring to an Israelite only, then an "alien" should be exempt as well, on the self-same grounds. Or again, if the word is to be taken in its widest sense, as, indefinitely, "another," why should not an Israelite be bound to pay when his ox gores to death the ox of an "alien?" The moral, however, of the question lies in the attempted solution of the difficulty; "This *legal* point," we answer, "we *do not tell the Government!*" The following is a summary of the extraordinary notion of what is right and wrong. A. Rashi says, in reference to

[q] The whole of the matter is quoted from *Hershon's Talmudic Miscellany*, before referred to—a book for which I must again express to the learned author my best acknowledgments, it having saved me the trouble of a good deal of research.

a preceding Halacha[r], "An alien forfeits the right to his own property in favour of the Jews!"

But, probably, what even exceeded the foregoing as an evil to the country, if comparisons may be drawn, was the *low* estimate which the Jew put upon one of the two important sections of mankind, into which human society is divided. It is true when the Jew went back to contemplate the solitariness of the man without the woman in the time of the Creation, he goes so far as to state that without the woman the man is not a perfect man[s], acknowledging, therefore, that upon *her* most of his comfort, joy, and so many of the blessings of his life, depend. Nevertheless, when Israel grew up into a *people*, whether as a sentiment which is natural to man, or whether through learning from neighbouring nations, more or less, with which they had come into contact, there developed to the stronger of the two another feeling, which resulted in the altered[t] position of one of the sexes, and to the damage of the common weal!

Laws affecting women.

Moses, no doubt, includes womankind, when he speaks of the entire people; but we remark, there is no *special legislation* until the appeal is made, and work is to be done, for *the service of the Lord*. Then the range of mere domestic duty can rise to the position of "*Consecration*,"

[r] Halacha (הֲלָכָה) apud Rabbinos et Talmudicos est "Constitutio juris, sententia, decisio, *traditio decisa*." — Cf. *Buxt. Lex. in verb.* Hence the expression בַּר הֲלָכוֹת, Filius Constitutionum Talmudicarum was Doctor Synedrii.

[s] Rabbi Chaya says that he is not a perfect man, fortifying his position by the following quotation, Gen. v. 2, where the two are spoken of as one man, "Male and female created He them, and called their name Adam, in the day when they were created."—*Talmudic Miscellany*, p. 304.

[t] This comes out very clearly in various parts of the Talmud. For although here and there passages may occur which enforce the duty of attending to the higher education of women, more extracts, probably, could be given which take an opposite view. One argument with the Jews is, and I take it as showing, in addition, their habitual perversion of their own Scriptures, that in Deut. xi. 19, it is merely said, "And ye shall teach them to your children," a command which, as it passes refracted through the Rabbinic medium, becomes בְּנֵיכֶם לֹא בְנוֹתֵיכֶם, your sons, and *not your daughters*.

when rendered in acts of hallowed self-denial. It is written, "All the congregation of the children of Israel departed from the presence of Moses. And they came, every one whose heart stirred him up, and every one whom his spirit made willing, and they brought the Lord's offering." . . . . "And they came, *both men and women*, as *many as were willing hearted*." . . . . "And *all the women* that were wise hearted did spin with their hands, and brought that which they had spun;" . . . . "for all manner of work, which the Lord had commanded to be made by the hand of Moses." (Exod. xxxv. 20—22, 25, 29.)

Laws in war.

And should the calamity of war arise to the Israelites (for through this, as by a visible instrument, were God's people to learn how abhorrent national sin can become, when the cry of it rises up to heaven) the same was not to be waged, *till* the offer of peace was renewed; then too, when the sword was unsheathed and the city condemned to a siege, were the *women* and the *little ones* to be remembered. "Pacem habere debet voluntas[u]," says St. Augustine.

It matters little if we find, in the lucubrations of Rabbinical literature, such an expression as the following, that "woman is an unfinished vessel." For it is to be remembered, that it is a man who writes, and who perhaps, at best, had not a very sufficient knowledge *even of himself*.

Laws affecting marriage and the education of children.

But the idea assumes a more serious form as affecting the social and political machinery of an entire nation, when we have the opinions broached, and acted upon in public policy. "Great consideration is given by the Jew to have children," says the old Rabbi, "and more especially *male* children; because when a *boy* is born, all rejoice over him, whilst over a *girl* all *mourn*."

Now this is not a mere chance expression of a Jewish

[u] The passage is thus given in full:—

"Pacem habere debet voluntas, bellum necessitas, ut liberet Deus a necessitate, et conservet in pace. Non enim pax quæritur ut bellum excitetur, sed bellum geritur ut pax acquiratur."—Epist. 189, *ad Bonifac. Episc.*

mind—it is the fixed habit of his thoughts. For "blessed is he whose children are boys, and hapless is he whose children are girls."

Moreover, they attached, as a people, great importance to *married* life[x]. But here again, after all the blessings which at the ceremony had been accorded to the wedded pair, they met them, if I may so speak, with a tremendous threat, in repeating the national judgment. We are told "Seven are excommunicated before heaven." Only two need be mentioned, "*He that has no wife*," and secondly, "A married man *who has no male* children."

In short, the early education of the two sexes received a different stamp, not that the female sex received the greater attention because of their acknowledged weakness—at least so received by the Jews—in comparison with the other; the privilege was, that with the gentler sex, duty, in its severity of discipline, began earlier. A boy at thirteen years of age was bound to observe the fasts in full, i.e. throughout the whole day. A girl was bound to do the same thing at *twelve*. The cause assigned is more curious than reasonable: "A boy is supposed to be weaker than a girl on account of the trying and enervating effects of much study."

Evidence of a hundred women in a Court of Justice only equivalent to that of one man.

But probably, as affecting the whole range of national morality, the next statement may be considered the most startling and unjust. In giving their respective testimony upon a dispute before a legal tribunal, the word of one hundred women was supposed to be an equivalent to that of one man! Or, in other words,

[x] The following directions are curious: nevertheless, in their way, they give us a little insight into the Jewish mind.

"Our Rabbis teach, Let a man sell all that he has and marry the daughter of תַּלְמִיד חָכָם, a learned man. If he cannot find such an one, let him marry the daughter of one of the great men of his day. If he does not find such an one, let him marry the daughter of one of the heads of the congregation, or, failing this, the daughter of a charity-collector, or even the daughter of a school-master. But let him not marry the daughter of an עַם הָאָרֶץ, i.e. a man of the earth, an illiterate man. For the unlearned are an abomination, as also their wives and their daughters."—*P'sachim*, fol. 49, 2. Quoted by Hershon in his "Talmudic Miscellany," p. 91.

if we consider the comparative value upon Jewish principles at the time of their history which we are considering, the honesty, truthfulness, and the moral principle of a woman, all round, sink almost into comparative nothingness, when balanced against these qualifications in a man!

Elevation of women by Christ.

Into such particulars it will not be necessary to go further, the object being, to draw a contrast between Jewish and Christian law. Of the latter it may be said, that it not only modified, but in a measure *corrected*, the evil complained of, from *the day when over the Virgin-Mother the Holy Ghost* is said to have shed His gracious influence, the title of "blessed" being imparted to her.

But it may be asked, and perhaps the words warrant the interpretation, Did the rays of that influence stop there? or did they, with her, extend themselves over the whole race of womanhood? For as through a woman the first transgression came which was universally felt, so again, through the instrumentality of a woman[y] was the Salvation accomplished, which Salvation included all other blessings implied in the very word, even towards all mankind. "Adam was not deceived, but the woman being deceived," says St. Paul, "was in the transgression." "Notwithstanding, she shall be saved *through the childbearing*," that is, through the birth of Christ from Mary,—which was a blessing, as upon all mankind, so peculiarly upon the woman.

Accordingly, in all the history of our blessed Lord that ensued, we cannot but be struck with the promi-

[y] The old Christian Fathers delighted to dwell upon this topic. St. Augustine, e.g., speaks thus, Serm. 208:—

"Hæc est enim quæ sola meruit mater et sponsa vocari, hæc primæ matris damna resolvit, hæc homini perdito redemptionem adduxit. Mater enim generis nostri pœnam intulit mundo: genetrix Domini nostri salutem edidit mundo. Auctrix peccati Eva; auctrix meriti Maria. Eva occidendo obfuit, Maria vivificando profuit. Illa percussit; ista sanavit. Hæc enim mirabili atque inæstimabili modo omnium rerum et suum peperit Salvatorem." . . . "Hæc est Domini templum, fons ille signatus, et porta in domo Domini clausa."

nence given to the woman, which is in vain looked for in the details of the olden dispensation. This comes out evidently enough in the earliest part of the Saviour's ministry, when, at the marriage-feast, Jesus wrought His first miracle, and it is deemed a particular worthy of record, that His mother was there, in conjunction with the disciples.

Sanctification of marriage.

Here was vouchsafed not only the sanctity of marriage, but the union of two as one—in equal membership with Christ Himself. But there is this remarkable addition to its being the beginning of all Christ's miracles, as distinguishing it from others, that there, and then—a fact standing out like the prominent figure of a picture—"He manifested forth His glory." But why His glory? Unless we look upon the incident, with its additional meaning, in the universality of its application, in that marriage had not only been restored to its original dignity, but even gifted[z] with a spiritual privilege, as the outward symbol of the heavenly union subsisting between Christ and His Church!

All throughout the heathen world, the weaker half of mankind had been tyrannized over, and debased, by the strong arm of force. And as instances of the same thing, polygamy and divorce had been suffered from patriarchal even to the times of the Jewish dispensation. The latter had been tolerated, says Jesus to the Jews, when He was laying down the claims of a higher morality, only because of the hardness of their hearts.

Again, not less clearly may the conception be brought out on the occasion of the woman who made her way through the midst of a crowd, not to ask, or supplicate for the application of the Saviour's healing hand. But she urged her efforts to the interruption of the proceedings which had engaged the attention of the multitude, being contented herself, such was the strength of her faith, if only she *could touch the hem of His garment!* The sufferer thought within herself, if she could but reach near enough to the inanimate matter, the very contact with

[z] Card. Newman's Sermons.

it would do all she wanted, for a complete and instantaneous cure! And she who had deemed herself too *insignificant* for a word in the exercise of omnipotence, received a commendation unto all succeeding generations of mankind, that her faith had saved her, through that virtue which, as though sacramentally, had passed out of Himself for her benefit!

Women at the Crucifixion and Resurrection.

But once more, let us come towards the close of Christ's ministry, when His mother again appears conspicuous amongst others who are present at the scene of His Passion and Crucifixion. We are told how the women followed Him from Galilee (St. Luke xxiii. 49), unwilling to be separated from Him, notwithstanding all the enmity which had been aroused and hurled against Him. Not for one moment did they flinch from the post of duty, which they subsequently took up, in order to be nigh unto the Cross. As the blessed Jesus predicted, His disciples, after all the discipline and training they had gone through in their constant attendance for years upon His ministrations, nay, after all the protestations of faithfulness which they avowed, even to the last, the strain was too much for their courage[a], as the women themselves witnessed, — and witnessed to shew what *they* could do, when, in turn, their courage and endurance were appealed to.

To describe the contrast, the old Christian Fathers, borrowing the idea from a heathen example, declared, that nature here had changed the relative[b] peculiarities of the two sexes, viz. that the women had become men, and that the men *had behaved themselves* as women! till we see, as the crowning act of all, Jesus committed the care of

[a] "Promptiores fuere ad fugæ præsidium, quàm ad fiduciam patiendi cum Christo."—*Bed. in St. Marc.*, c. xiv. v. 49.

[b] "Dicit hoc St. Matth., tum ut mulierum harum præ viris fidem, constantiam, et pietatem in Jesu celebret, quòd, spectantibus Judæis Christi hostibus, ausæ fuerint cruci ejus astare, et compassionem suam in eum testari. Unde Euthymius: 'Vide,' ait, 'conversum ordinem; discipuli siquidem fugerant, discipulæ verò assistentes permanebant,'" &c., &c.—*Corn. a Lap. in loc.*

His Mother to St. John the Beloved, in such terms as these, "Behold thy son! Behold thy mother! And from that day that disciple took her unto his own home."

But then, in the next step, when the day of the resurrection comes, it was *not* to the disciples, to whom Jesus had so often foretold the fact, that He manifested Himself, as one might have supposed, but to *her*, a penitent, "out of whom He had cast seven devils;" as though the sex, which had been the immediate cause of Adam's transgression, should be the *first* to hear the news, that the very transgression had been cancelled by the act of the Resurrection! She, verily, who had been made to hear of the curse of death, was now made the first recipient of the tidings that brought a better and more abiding life to all[c]. And could anything more truly show how woman had regained her earliest and most honoured place, that when the forty days were over after the Resurrection, whilst the Apostles were assembled in that upper-room at Jerusalem, waiting for the promised gift of the Spirit — whence the message would go forth from them for the conversion of the world — the faithful women also were assembled there. And among them, for the last time, the name of the Virgin Mother is mentioned.

Dignity of women recognized in Pauline Epistles, and by the early Church.

And were it needful to speak more at length upon the topic, there is throughout the Epistles the repetition of the same great truth. For instance, when St. Paul sends his salutations to the Christian converts, it is in such terms as these, which, of course, would never have been possible under the 'Old Covenant,'—"All the Saints salute you." "Salute every Saint in Christ Jesus." "Likewise greet the Church that is in their house." Again, in another form, "I commend unto you Phebe, our sister,

[c] "Thus it is that Christianity . . . has with it that gift of staunching and healing the one deep wound of human nature, which avails more for its success than a full encyclopædia of scientific knowledge, and a whole library of controversy, and therefore it must last whilst human nature lasts."—*Grammar of Assent* (Card. Newman), Part II. c. x. p. 482. 3rd Edit.

which is a *servant*[d] of the Church which is at Cenchrea." And here, it may be remarked, that the very term is used to describe her which had been *officially* used, when the seven deacons were appointed "*to serve tables*," in order to leave the Apostles themselves free to carry on the duties of their special office. And this gives a proof, how, under a new revelation, women were to have not only their own position restored to them, but that, as a consequence, they would now "be called" to the work of co-operation, in building up the Church of Christ! And as a fact, the feeling did not die out, in the course of Church history: "Blessed too are those women," says St. Cyprian[e], "who are set with you in the same glory of confession; who holding to the Lord's faith, and with *fortitude above their sex*, not only themselves are close upon the Crown, but have, by their own constancy, given an example to other women also."

The Church represented as a woman, viz. The Bride of Christ.

But, perhaps, after all, the most remarkable mode in which the Book of Inspiration teaches the dignity of women is to be found in what belongs to the last winding up of revelation. And then, it may be said this is only a vision which was vouchsafed to the Evangelist, when he saw the Church, arrayed as a bride, come down from heaven! And yet, was truth never declared by this, and such-like instruments? On the contrary, it was occasionally one of the very means which the Almighty made use of, for His communications between heaven and earth.

If so, then futurity was opened out before the eyes of the aged Apostle, and after all the vicissitudes to which the history of the world has been subjected—links they may be called of one protracted chain, severally conjoin-

[d] Rom. xvi. 1, called διάκονος, 'a servant of the Church,' i.e. one who out of her wealth, διηκόνει, ministered to the Apostles, and sustained them, and particularly St. Paul, at Corinth. Cf. Rom. xvi. 1, with the close of the 1st Ep. to the Corinthians.

However, in Rom. xvi. 2, she is called a προστατις πολλῶν, &c., i.e. προξένος, 'an entertainer,' &c., 'succourer of many.' From Corinth she seems to have carried this Epistle to Rome.

[e] St. Cypr. Epist. vi., to Sergius and other Confessors.

ing and carrying forward the various dispensations of the Almighty,—here at last is the issue. It connects the end with the beginning, that the Church under the representation of a figure, the Holy City, the New Jerusalem, is seen coming down from God—one compact and united body, which she presents without spot, or blemish, before the throne of God!

Separated from what "is fearful, and unbelieving, and abominable, and all that is opposed to righteousness and truth," a great voice is heard out of heaven, saying, "Behold the tabernacle of God (the 'Shechinah[f]') is with men, and He will dwell with them, and they shall be His people, and God Himself shall be with them, and be their God." "And there shall in no wise enter into it" (continues the vision) "any thing that defileth, neither whatsoever worketh abomination, or maketh a lie, but they which are written in the Lamb's Book of Life."

Instead of the olden unbelief which opposed itself to "Jesus and His testimony," it is written again, "They sing the song of Moses, the servant of God, and the song of the Lamb, saying, 'Great and marvellous are Thy works, Lord God Almighty; just and true are Thy ways, Thou King of Saints.' Who shall not fear Thee, O Lord, and glorify Thy Name? For Thou only art holy: for all nations shall come and worship before Thee: for Thy judgments are made manifest." In other words, as touching every form of unbelief, God's dealings with the world cannot be accomplished without the contrast being clearly drawn between truth and falsehood, and the evil finally rejected!

Causes of condemnation of Christ, notwithstanding the general justice of the Jews to their own nation.

But once more, to recapitulate what has been advanced, if Jewish legislation be commended for its enlightenment and the care with which it was administered, and that for a lengthened period of their national history; and if moreover, whether looking at the matter on its secular or spiritual side, we know, that every Jew was,

[f] The same expression appears afterwards in Rabbinical writings.

"Four classes do not receive the presence of the Shechinah: scorners, liars, flatterers, and slanderers."—*Sanhedrin*, fol. 103, col. 1.

or could be, an educated man—the education embracing *a knowledge of the Law*—how is it that such a flagrant act of injustice *could* be perpetrated, in the condemnation, and after-crucifixion, of our blessed Lord?

Putting aside then, for a moment, the consideration of all prophecy, or the need[g] (as we are told in the Book of Inspiration) of the redemption or recovery of our race, and knowing what we do of the many features of mercy in the administration of the Jewish law, which was designedly sanctioned to prevent a too hasty execution of a public sentence, it is more than surprising, that such inconsistency should be possible on the part of a people, who one day saluted a remarkable person (to say the least) amongst themselves with loud hosannas and all manner of commendation, and subsequently, within a few hours should clamour for His punishment—a punishment too, not their own, but borrowed from the heathen[h] whom they ab-

[g] St. Athanasius (Treat. against the Arians) remarks: "Another will tell them in like manner, 'Without His coming among us at all, God was able just to speak and undo the curse.' 'But,' the great writer replies, 'we must consider what was expedient for mankind, and not simply what is possible with God,'" &c., &c.

In this statement Athanasius is supported by Naz. Orat. xix. 13; Theodor. adv. Gent. vi. pp. 876, 7; St. Augustin. de Trin. xiii. 13. It is denied in a later age by St. Anselm. But St. Thomas and the Schoolmen side with the Fathers, Vid. Petav. Incarn. ii. 13. However, it will be observed from what follows that Athanasius thought the *Incarnation*, still, absolutely *essential* for the renewal of human nature in holiness. In like manner, in the *Incarnation*, after saying that to accept mere repentance from sinners would not have been fitting (ἔνλογον), he continues, "Nor does repentance recover us from our natural state, it does not stop us from our sins. Had there been but a fault committed, and not a subsequent corruption, repentance had been well; but if," &c., 7. That is, we might have been pardoned, we could not have been new made, without the Incarnation; and so supr. 56. See Notes (Card. Newman's) on the passage in St. Athan. Disc., ii. cap. 19.

[h] Jesus Christ was led before the Sanhedrin, as already remarked, the great ecclesiastical and civil Council of the Jews. By this was the Saviour denounced before the tribunal of Pilate. This is distinctly denied by Jost, who asserts the assembly to have been a tumultuary and irregular meeting of the enemies of the Jews.

The question, mainly, depends on the true meaning of the sentence in St. John xviii. 31, "It is not lawful for us to put any man to death." The Jewish Tract, 'Sanhedrin,' lays down the law: "Quatuor supplicia capitalia

horred, aye, *that the punishment might be made the heavier, and the more ignominious!*

For instance, it was one of the priestly order who had to examine the *accused*, and one of the highest of the order, so that if there was no feeling of mercy, one would naturally expect strict justice to be present, and that careful inquiry would be made before judgment was dispensed. Now for aught we know to the contrary, education, and, above all, a careful legal education, still bore its fruits amidst that nation.

Moreover, Jerusalem was not only the capital of the country, but the great centre towards which the best education of the land, legal not excepted, turned itself, as the great field for its development and exercise. And it may be remembered, throughout the ministerial life of Christ, in all the heavy denunciations which He uttered against that people and their rulers, it was not so much the perversion of justice that He complained of, as the traditional incrustations which (if I may so speak) had gathered themselves around their social and political system.

senatui tradita sunt," (as it is) "lapidatio, ustio, interemptio quæ fit gladio, strangulatio."

Whether the Jews had lost, or retained, the power of inflicting capital punishment, has been debated with the utmost erudition, and, like similar questions, has been debated without coming to a definite conclusion.

The stoning of St. Stephen seems to have been a judicial, not a tumultuary, proceeding.

The older Christians were perplexed with this difficulty. Theophylact thinks its meaning to be, that the Jews, at that time, had no power to put to death by crucifixion; others, that they had no power to put to death for treason; and the crime of which he was accused was treason against the Roman authority. SS. Augustine and Chrysostom thought it was not lawful to put a man to death on a holy day, as the preparation for the Passover.

Probably, as Milman states (vol. i. p. 342) that, at this time, during the transition from the national government under the Herodian family to the direct government of the Romans, the authority of the Sanhedrin was altogether undefined, that they did not know whether the Romans would permit them to execute capital punishment, especially on a criminal accused of rebellion. There were terrible and recent reminiscences how Herod, and even Archelaus, had possessed and executed the power of life and death.

Had the Romans appropriated to themselves that power, or would they permit the Law to be put in force by its ancient and ordinary administration? See, upon the subject, Milman, vol. ii. p. 107.

True again, Christ never once complained of their entire abnegation of belief in the existence of a God—only they did not serve God with the purity of obedience which was *His undoubted* right; the national worship was still *His* in the offering up of the daily sacrifice—only, the same was not given to Him "in spirit and in truth." That is, there was worship enough in the external, whilst it was the inner and spiritual which was wanting, to affect the national life. Unbelief, no doubt, in some form, existed amongst them. And our Lord condescended to argue against it, proving, out of their received documents, the existence of angels, and spirits, and the doctrine of the resurrection of the body.

But then the unbelief was confined to a particular class [i], and however influential the class was, it was not the influence of numbers [k]; the line of argument with such unbelievers being, that what we cannot see, bodily and mentally, cannot be accepted. But take the most important point, as being the foundation of all belief, viz. *the existence of Almighty God.*

Now, not only did Christ never reprove them for denying this, but, judging from what has come down to us in the knowledge, it would have been *an absolute impossibility* for such a monstrosity as a Jewish atheist to have become a member of the Great Council of the nation! so strongly rooted, in the national mind, was the doctrine of the *A'hidus Hashem* [l], i.e. the *Unity of the Godhead* and the *spirituality of the Creator.* And however much the belief itself, in the course of time, may have degenerated (if I may use the expression) into a kind of hard rationalistic

[i] Cf. also the Rabbinical writings: "All the benedictions in the Temple used to conclude with the words, 'Blessed be the Lord God of Israel unto eternity;' but when the Sadducees, corrupting the faith, maintained that there was only *one* world, it was enacted that they should conclude with the words, 'from eternity unto eternity.'"—*Berachoth*, fol. 54, 1.

The next observation is added simply because it is recorded: In Derech Eretz Zuta, chap. i.

"Learn or inquire nothing of the Sadducees, lest thou be drawn into hell."—*Hershon's Talmud. Miscell.*, p. 9.

[k] See before, page 96. [l] See note at the end of the chapter.

Deism, it was, perhaps, important enough to become the turning-point, out of which was evolved the very condemnation of our Lord.

At first sight, this may appear a strange assertion touching the blessed Saviour, after all the particulars that are given us in the sacred history, where we meet with such expressions as these, everywhere repeated, that "the common people heard Him gladly;" that "never man spake like this man;" the expression used after the performance of a miracle, "that it was never so done in this fashion;" that "following Him on foot, the multitudes pressed upon Him for to hear Him;" and even were they willing to give up their daily food, in response to their bodily wants, that they might have more time and opportunities for following Him, and witnessing the marvellous works of His power! It is written, "that multitudes came to Him from every quarter," from Judæa, and from Galilee, and from beyond Jordan, and the day was scarcely long enough for all He had to do, and say!

In short, one might venture to affirm, that Jesus never refused to listen to the cry for help, except when, on account of the hardness of their heart, He was constrained to say, "Ye will not come unto Me that ye might have life;" the reason for the words being, that, although the people did come, the numbers coming did not sufficiently satisfy the largeness of His heart, when He observed further, whilst they laboured for the meat that perisheth, there was not equal zeal in seeking after that meat which pertaineth to eternal life.

Added to this, the very form in which the history of our Lord is given would seem to furnish some explanation how Jesus came to be condemned. Popularity, at its best, counts but little when historical events come to be examined. It is always, and truly, said of popular favour that it is as fickle as the wind, both as to the quarter from whence it comes, and in the effects which follow it, if we trace them.

We may remark, furthermore, how much more stress as to particulars is laid upon the latter than upon the

intermediate parts of the history. For instance, whilst in all the four Evangelists there is such an abundance of details towards the close of Christ's earthly life, St. John, who omits so much of the intervening particulars, takes us forward rapidly towards the end[m]. Very early in the narrative it is written, "Jesus answered, 'Have I not chosen you twelve, and one of you is a devil?' He spake of Judas Iscariot, the son of Simon; for he it was that should betray Him, being one of the twelve."

Position of Pilate.

Much has been said, too, of Pilate in his fickleness and cruelty, that, for one moment, he was willing, and even desirous, to release Jesus; at another, that the clamour of the multitude sufficed to determine his judgment to the other side, viz. to deliver "Jesus to their will." In other words, whether envy, or fear, were the moving cause, Pilate was resolved to divest himself, if possible, of all responsibility. And again, among the various influences which worked upon his mind, was the *dream* that his wife had because of Jesus, which she, no doubt, looked upon *as a warning* that Pilate had better not intermeddle to bring about what might prove a disastrous issue, in the condemnation of One so innocent as the Accused!

All this time also, the Scribes and Pharisees, i.e. the secular and religious elements of the city, were urging on the act, that not only death, but even the death by crucifixion, was really the sentence due to such a Transgressor!

The claim of Christ to equality with the Father, the main cause of his condemnation by the Jews.

Besides, if we so look at the matter, there was no inconsistency whatsoever as respects the ruling authorities, who were the mainspring of the entire movement. What they decided upon was no more than the outcome of all the hatred and prejudice which gathered itself up *into one point* at the trial and condemnation. And steadily did the hatred develope itself. Though struck with the wisdom which Christ manifested, and the mighty works that were wrought by His hands, the only

[m] St. John's Gospel vi. 70.

conclusion they could come to was, when He asserted His high claims to the acknowledgment of Himself and His mission, "Is not this the Carpenter, the Son of Mary, the brother of James, and Joses, and of Judas and Simon? And are not his sisters here with us? And they were offended at Him."

Many of His disputings with those who might be called His enemies from the beginning turned upon the point that, in asserting His claims, He assumed to Himself *an equality with God:* "My Father worketh hitherto and I work." "*Therefore* the Jews sought the more to kill Him, because He had not only broken the Sabbath, but said also that God was His Father, *making Himself equal* with God."

Once more, in His controversies with the Jews upon this, there is a still more remarkable statement, and none which excited more the indignation of His enemies, when He declared, "Before Abraham was, I am[n]." We are told, "Then took they up stones to cast at Him." But was this particular mode of showing their anger the result of accident, if one may so speak? No, it was the deliberate act, and the direct issue of *their* sense of blasphemy, in His *appropriating to Himself the Holy Name of God!*

With these passages before us, it may be remarked that the Evangelist St. John, who proclaims so distinctly the Divinity of our Lord, is the same who brings out to the full the nature of the charge that Jesus was *a blasphemer*, and as such, *a high offender against the law.* To the pleading of Pilate for the release of One whom he declared so free from fault, the Jews answered, "We have *a law*, and by *our law* He ought to die, because He *made Himself the Son of God.*" "*Ecce altera major invidia*[o]."

[n] Cf. Exod. iii. 14.

[o] The whole passage runs thus :—

"Ecce altera major invidia, parva illa videbatur affectâsse regnum, et tamen neutrum sibi Jesus mendaciter usurpavit: est enim Dei Unigenitus, et lex a Deo constitutus super montem Sion, et utrumque demonstraret nunc, nisi quantò erat potentior, tantò mallet esse patientior."—Cf. *Corn. a Lap.*, St. John xix. 7.

says St. Augustine; as though, with other reasons, *this* was *the* one which appeared, alas! the most prominent to influence the Jewish mind.

Without, therefore, attempting to pry further into this vast and awful mystery—"which things[p]," the Apostle tells us, "the angels desire to look into" that they may see them in their accomplishment and completion:

It is our wisdom, rather, to ponder upon the warning which St. Paul gives us as Christians, when echoing to the full the injustice of the condemnation inflicted upon our Lord by the Council of the Jews. He tells us, and very plainly too, that the very act, in all its tremendous heinousness, can be, and is, done over again, really, although in figure, so often as contempt, or the unbelief of secret, or avowed, apostacy lifts up its head, after all God's grace and superabounding mercy which have preceded!

Atheism of the present day.

It would be out of place to discuss the topic *theologically;* for our inquiry is of Law, and not Divinity. Nevertheless, events have of late been occurring which are too startling to be passed over, when every moral and religious sentiment would seem to be outraged, and faith itself, i.e. the Christian faith, trampled under foot.

The same comes out also in the Gospel of St. Mark, as well as St. Matthew. Cf. Maldonatus on St. Matth. xxvi. 64; St. Mark xiv. 62.

"'Tu dixisti,' ait etiam clariùs aut quia ego sum 'Hebraicâ phrasi' neque interrogat, an populum turbârit, an falsa docuerit, an templi fuerit-minatus excidium, sed an esset *Filius Dei,* quòd sciebat ipsum non negaturum."

[p] εἰς ἅ, i.e. "scilicet mysteria Christi, præsertìm salutis et gloriæ beatificæ desiderant Angeli prospicere, ut scilicet ea videant perfecta et completa."—Cf. St. Iren., l. 4, c. 67, and l. 2, c. 29.

The expression is also used by St. Bernard with reference to the first preaching of Christ upon the mountain side:—

"Talis est quem nos sequimur, cui adhæremus; totus desiderabilis, in quem non solùm populi, sed ipsi quoque Angeli sancti desiderant prospicere. Quid vobis suavius apponemus? Nimirùm hæ sunt deliciæ Angelorum. Gustate proinde ac videte, quoniam suavis est Dominus."—*Serm. in Fest. Omn. Sanct.,* 1.

Again, after the close of Christ's ministry on earth, St. Cyril speaks much in the same way, where the τὰ παθήματα are referred to, i.e. "passiones, et posteriores glorias, quæ proximè præcesserant."—*De Incarnat. Unig.* l. 1. c. 28.

Each century[q] bears along with it its own peculiar work. The century preceding our own is known for its coldness in religious conviction, and occasionally for its secret unbelief, holding just what the human conscience liked in its vagaries, or accepting what the narrowness of man's reason could explain!

But it remains for the present century to take a greater stride and proclaim to the world its boldness of open defiance!

Is this language too strong, when we hear that the following sentiments were uttered before a crowded audience in London[r], and for some time remained unrebuked[s].

A reverend divine[t] said, he came there as a Christian clergyman to speak of "the great work Mr. Bradlaugh had done in the East of London, for the moral elevation of the people." "He supported the resolution because he saw that the action of the so-called religious party in the House of Commons had been making the religion of Jesus Christ to stink in the nostrils of the people."

The Marquis of Queensberry[u], proposing a vote of thanks to the Chairman, observed, "It had been said that

[q] St. Athanasius puts this point well, although it is almost upon the lowest level that he could put it. But he tries to adapt himself to the necessities of the time in which he lived, or else to certain individuals he had in his mind's eye, in his own day: allusion has been made to it.

Βέλτιον γὰρ ἀποροῦντας σιωπᾷν καὶ πιστεύειν, ἢ ἀπιστεῖν διὰ τὸ ἀπορεῖν, &c.—Orat. ii. 36.

[r] See the account of the mass-meeting in London "Times," June 10, 1881. This was correct, as far as I know, when the paragraph was written. There has been a proper interference since.

[s] London seems to have been somewhat notorious a few generations ago for its pantheism.

"Parisiis plurimùm versantur (Pantheistæ) itidem Venetiis, in omnibus Hollandiæ urbibus, maximè certè Amstelodami; et nonnulli, quod mireris, in ipsâ curiâ Romanâ; sed præcipuè, et *præ aliis locis omnibus, Londini*, abundant, ibique sedem, et quasi arcem, suæ sectæ collocant."—*Pantheisticon*, p. 42. Quoted in Waterland's "Charges and Sermons," p. 53, note.

[t] The Rev. Stewart D. Headlam, said to be one of the curates in the East end of London.

[u] His Lordship says he has lost his seat in the House of Lords partly on religious grounds. Probably the fact alluded to might be stated with more accuracy, as on *non*-religious grounds.

he (himself) had no religion." "He denied that statement." "The religion of humanity which he professed, and which he felt sure Mr. Bradlaugh did, was the outgrowth of Christianity." "It was *the religion* of the future" (possibly, if the noble speaker confines the remarks to himself), "and would have to take its place."

Comparison of tenderness towards unbelief, with unjust condemnation of Ritualists.

Now, *once more*, for a single moment, contrast with this the imprisonment of brother-clergymen; and in the case of one of them (if the report is correct) there has been superadded the *spoiling* of goods, and the *breaking-up* of a home! One naturally inquires, "By what legal process, civil or ecclesiastical, can such amazing differences be wrought in this nineteenth century of the Christian era?" Is it the spirit of the *Civil Law?* This, *ex justitiâ*, boasts of its old principles of Equity. Is it Ecclesiastical Law which, in mercy to those who would have suffered wrong through the strictness, or deficiencies, of the Common Law, was the means of introducing into England *the righteousness* of Equity? No, it is neither the one, nor the other. It is simply the outcome of another Law, if the term is not misapplied, where a spirit of indifference takes the place of every other Law!

NOTE TO CHAPTER III.

Modern views with regard to Atheism—opinions of Lords Shaftesbury and Redesdale, and of Bishops Van Mildert and Jackson.

In connection with the Belief in God which is said to have been inherent in the Jewish people, we may refer to an important discussion in the House of Lords (March 24, 1882), initiated by a proposition of the Earl of Redesdale for altering the oath or affirmation, as now taken by the members of the two Houses of the Legislature, into the expression of a belief in "*an Almighty God.*" The result, that the motion was withdrawn by the noble mover himself, is a sufficient proof that the idea did not find favour in the Upper House, it having been shown, in the course of the discussion, that greater evils would arise, if the present state of things were disturbed by any inopportune innovation.

This was not done, however, without eliciting, in addition, certain statements from the speakers, which were, in themselves, sufficiently grave in their character.

The Earl of Shaftesbury, who led the opposition in the matter, spoke "of the awful character of the times in which we live, and the terrible necessity that something should, if possible, be done to resist the strong and rapid tide of infidelity, that seems ready to overwhelm us."

A startling assertion! if correct. One says "if correct," because not more than two or three years have elapsed, since a high ecclesiastical authority *denied*[x] that such an evil existed; or at least, if the same did exist, it was in a *very small* degree.

[x] As a rejoinder from another bishop, I borrow the following as better than any bare statement of my own.

Speaking at the Annual Meeting of the Diocesan Education Society at York on Monday, the Archbishop of York said, "that the Church of England was not now doing battle with different forms of dissent. The battle was now a much more grave one, and it was for the existence of Christianity itself. The children of the poor, especially in great towns, were besieged, from first to last, with every kind of invitation to cast their Bibles into the fire (*sic*), and to believe that the science of such as Mr. Bradlaugh was going to stand in the place of a Bible to make them wise and happy."—Weekly Supplement to the *Sheffield Daily Telegraph*, April 22, 1882.

Perhaps some may not be disposed to acknowledge the force of these terms, if tested with logical exactness. "People," say they, "are apt to be startled when they hear a sudden disturbance of a protracted sereneness of the atmosphere," these being the very people who, like the rest of us, seek sleep at night, but spend a large proportion of their days up above, in a balloon!

We cannot but fear that the author of the last-mentioned statement must either have been living in a paradise of his own, or else wilfully shutting his eyes to the reality of what was passing before him!

But Lord Shaftesbury goes on to say, "They (Atheists) are formidable, no doubt, but they are few." "The pure, simple Atheist who admits nothing but force and matter is a being of rare occurrence." "Those, however, who allow the existence of a First Cause, but *deny* His intervention in the affairs of man, who admit no revelation of a future state, or any systems of rewards and punishments, may be counted by myriads" (*sic*).

Suppose, from the noble layman, we now turn to the opinions expressed by a high ecclesiastical representative in the Upper House.

The Bishop of London is reported to have said:—"Speaking," however, "only for himself, he would venture to agree with the noble lord" (Lord Redesdale) "that the admission of Atheists to the legislature would be a national calamity, and might be a national sin!"

Now, touching such like topics, another Bishop[y] of the Church has said (who was great in his own day for the weight of his theological learning, and for the boldness with which he expressed himself, when contending "for the Faith once delivered"), "An irreligious Government," Bishop Van Mildert remarks, "an irreligious legislature," i.e. where no religion is professed, "a na-

But the world below has long been preparing to witness the gravest issues affecting our "common Faith." Doubters have only to look towards the end of vol. ii. of "Heterodox London," or "Phases of Free Thought," by Rev. C. M. Davies, 1874, and they will then see, for themselves, some of the volcanic elements at work. For obvious reasons, I forbear drawing any quotations from this source, in confirmation of any such like statements as the above!

However true this statement is, it is very different from what we have been accustomed to hear, at other times, and in other places. To be "temperate" and "to be respectable," are two very good things; but no one will assert, that they constitute the entire essentials of a Christian character, in the comprehensiveness of belief and practice. Once, upon going, accidentally, into a Training-school, I was startled with hearing from the lips of the Examiner, when urging his exhortations upon the Students, that they must realize the importance of their position in after-life, since much might depend upon *their* teaching as to the Christian faith of their scholars, even to the belief in the existence of God!

[y] Bp. Van Mildert's "Sermons and Charges," p. 307, 1838 (Bishop of Durham).

tion whose rulers and subjects discard from their polity and their *jurisprudence* a sense of duty to the Most High, as the prime source of every blessing, public and private, social and individual, would be a degrading anomaly in the history of mankind, more especially so in the Christian world;" and he goes on to say, "It might not be difficult to shew, that in proportion as Christian principles and Christian conduct have been maintained and acted upon, by States and Governments, in their intercourse with each other, have been their character and estimation throughout the world, and, consequently, their *real political greatness*."

But the next statements of the Bishop of London are not less serious: "Blank Atheism," he adds, "was not very prevalent[z], yet he feared there were men of keen and able intellects, pure and honest lives, who, though they do not disbelieve in God, would not say that they believed in Him—men, who, not being able to find proofs of His existence, such as they were accustomed to require in scientific inquiries, considered the question not capable of demonstration, believed that, in their present state of knowledge, the point was insoluble—that it was beyond the limit put to human power. They did not disbelieve there might be a God. They hoped there was; but the fact was not demonstrated."

Now "these men would be excluded," says the Bishop of London, "from the House by the bill of the noble Lord" (Lord

[z] Few works were written expressly against Atheism until the sixteenth century was considerably advanced. And these in the main appeared on the Continent of Europe. More appeared in the seventeenth century, England contributing her share in the important work, such publications appearing as Howe's "Living Temple against Atheism, or Epicurean Deism" (1675). We may mention also the two very able writers, viz., Cudworth, in his "True Intellectual System of the Universe," where, amongst other topics, the philosophy of Atheism is confuted, and its impossibility demonstrated (1678), and Bentley in his well-known "Boyle Lectures." But all through the eighteenth century flowed a stream of attacks. The bare catalogue of the books would be very lengthy. Very little appeared in the way of defending the system, the reason probably being, that, though the evil existed, those who held the tenets, whether from fear of opposition, or shame, or a feeling of delicacy towards the opinions of others, refrained from attempting to propagate their views through the press. Advancing onward, however, in the "Contemporary Review," Jan. 7, 1877, we have an article upon the attitude of the system towards morality, as if to remind us what grave issues must necessarily be the outcome!

Redesdale's bill). "They could not come forward and say, as honest men, I sincerely believe in an Almighty God." "That was not the class of men," concludes the Bishop, "whom they desired to exclude."—London "Times," March 24, 1882.

In looking at these two classes of men, and comparing their respective differences in the classification, the mass of people, whether rightly or wrongly, would scarcely draw that nice distinction for which the Bishop contends—*οὐκ ἔστι τῶν πολλῶν διορίζειν*—except that, in the one instance, they might, probably, attribute the flagrant state of mind to dogged ignorance, or early neglect in educational training. Whilst the other phase appears, they would observe, and not without astonishment, in companionship with education itself! The result, however, is, so far as *active* belief is concerned, identically the same, non-acceptance—call it, as you like, negation, or absolute rejection!

To describe these two classes, the Bishop unfortunately gives us, in the one case, *no distinctiveness* of term, wherewith to define the class, and through which we might understand more directly the comparative peculiarities of each. But happily the "Times" supplies the defect: "The Bishop of London," says that great organ of English opinion, "*dislikes an Atheist*, but he will not be hard upon an *Agnostic*."

Jewish language lacks terms to express phases of unbelief.

Now it is curious to trace backward some of the characteristics of *unbelief*. In order to understand the last state of mind which the "Times" speaks of, it so happens we have no word of our own. We have to appeal to Greek [a] heathenism to supply us. And further, we might, probably, traverse the whole range of the legal and theological literature of the Jews [b], and fail to discover

[a] And yet the statement (if carefully examined) would almost seem to be a 'libel' upon the old Paganism. "Paganism," says Bp. Van Mildert in Serm. iv. of "Sermons and Charges," p. 248, "has nothing in common with any of these" (alluding to different forms of religion, Christian and others), "except some imperfect recognition of those first principles of theology and morals, the belief of God and of a future state, which never, perhaps, have been entirely obliterated from the human mind."

[b] That is, like ourselves in modern days, they had to go to Greek heathenism, and to an individual unbeliever, for the term they required to express their ideas upon the point. The term they borrowed was *Epicurus*, to denote a "heretic" or "unbeliever," whether native, or foreign. On this word, and on מין, see Buxtorf. *Lex. Chald.* The latter is supposed by some to be derived from Manes, and to denote primarily a Manichee. Early Jewish

the term which *they* would use to define such a condition of the human mind. Indeed, their entire system would be found at variance with this, or any other analogous, idiosyncrasy arising amongst them.

Unquestionably, the terms of unbelief have their history as well as the unbelief itself.

In our own country, changes are to be marked of both. And yet in speaking of our own country, I am reminded by Waterland upon one occasion that "the evil was not of native growth, but transplanted hither from abroad." The evil alluded to is the introduction of Deism, of which Mr. Hobbes has been reputed to have been the first, or principal man, who introduced the principles here, or else that openly and glaringly espoused them. And it is added, "that it is not unlikely, that he imbibed the tenets of the system in France and Italy."

A learned foreigner takes notice of the rise of the "sect" (*sic*) in his time; and he wrote in 1563. His account of them is as follows; and we may as well transcribe it because it may serve to elucidate some points in the discussion alluded to.

writers used it especially when speaking of a Christian. But in later times, owing to the tendency of expunging anti-christianisms, it was frequently crossed out, or replaced by some other word, as *Çaduci;* and to such an extent has this been done, that wherever there has been a suspicion of an allusion to Christianity, the text can seldom be entirely depended upon."—*Taylor's Sayings of the Jewish Fathers*, p. 54, note.

We must not forget, moreover, a striking passage in 2 Esdras vii. 44, where the evil is alluded to, and where the passage is the more striking, as shewing the company with which infidelity is supposed to be associated :—

"Intemperance is at an end, infidelity is cut off, righteousness is grown, and truth is sprung up."

There is, however, one more term which ought not to be omitted, and of which we are reminded in the Peschito, or Syriac Version of the New Testament, in the passage where our Heavenly Father is said to be "kind to the unthankful and the evil." What we so translate is literally "the shameful" and "unbelieving."—St. Luke vi. 35.

ܟܣܝܐ ܗܘ ܠܐ ܕܥܒܕ ܡܠܐ ܟܦܪܢ

Now כָּפַר in Pahel, in its primary sense, has nothing in common with the idea of belief. It simply signifies "to wipe away," say some defilement, as can easily be seen by referring to Talmudic Hebrew, e.g., Deut. xxxii. 15, where we read "he forsook God which made him, and lightly esteemed the rock of his salvation," upon which we have the comment, וּכְפַרוּ בְּדַחֲלָא תַּקִּיפָא, the use extending itself into the cognate dialect, "et abnegarunt Deum fortem."

"There are several who profess to believe that there is a certain Deity, or God, as the Turks and Jews do. But as for Jesus Christ and all the doctrine testified by the Evangelists and Apostles, they take them for fables and dreams. They have entertained some opinions concerning religion, which are more extravagant than those of the Turks, or any other infidels. I know that some of this band call themselves 'Deists'—a new word in opposition to that of Atheists." Thus far speaks Peter Viret, Waterland adding, "For he is the man that gives this account of the modern Deists; and notwithstanding their complimenting themselves with a new plausible name, he scruples not to call their system of doctrine an *execrable Atheism.*"

If, then, this be so, as touching Deism in its relationship to Atheism, what position is 'Agnosticism' supposed to occupy relatively to Deism? There are some points of resemblance. Like Deism[c], the term is of modern date, only much more modern, invented to describe another phase of human opinion than that which was the direct outcome of Atheism, and which by some has been denounced as much as "blank" Atheism itself. If we examine Agnosticism[d] by the name which it has assumed, we

[c] "That modern species of infidelity called Deism, or natural religion, as contra-distinguished from revealed."—*Van Mildert's Bamp. Lect.*, ix.

"Although Hobbes appears to have introduced amongst us the principles of the system, Tindall seems to have been the first who *assumed for himself*, and bestowed on his co-adjutors the denomination of Christian Deists, though the name implied no less than an absolute contradiction in terms."—*Van Mildert's Bamp. Lect.*, x.

It is appropriated in the middle of the seventeenth century by Herbert to his scheme, and afterwards by Blount to himself and others to distinguish themselves from Atheists.

Towards the close of the seventeenth and beginning of the eighteenth centuries, the Christian writers sometimes even use the term "Deist" as interchangeable with "Atheist."

See also Waterland's "Christianity Vindicated against Infidelity." Van Mildert's Ed., vol. v. pp. 34, 35.

[d] The latest opinion I have been able to get hold of upon this matter of Agnosticism, is the more valuable, as coming from a well-known and distinguished layman in a lecture given at Stoke-Newington, entitled "Mr. Justice Fry on the Victorian Era." Here, at least, we cannot say there is any doubtful utterance, "The form of philosophy known as Positivism, which thirty years ago was influential, had not, in the lecturer's view, subsequently made way, but had rather lost ground. But a newer development of philosophy had been expounded by some, and by Mr. Herbert Spencer in particular, of which the chief conclusion seemed to be, that matters of religion and divinity

shall not be helped in the inquiry; for implied therein is no statement of belief, or its contradictory, but simple acquiescence in a state of mental negation!

Bishop Van Mildert on Atheism.

Now as a reply to some of the foregoing remarks, if one should go back to old Christian times, and quote any of the great writers of the Church—men of large intellectual grasp—the reply would be, that they wrote so very long ago, and that much light has been diffused over religious controversial topics since their literary productions appeared, however valuable for the day in which the authors lived!

Suppose, therefore, we keep nearer to our own generation, and be content to quote the words of *another Bishop*, who, from his *great* familiarity with the subject, was prepared for a good deal, but who, if he had been spared to see the present day, would have been astonished at certain ideas being so carelessly broached!

Bishop Van Mildert, in his "Boyle Lectures," which, by the way, were established for the express purpose of meeting *all attacks* upon revealed truth, says, without shading off, in the

could not be known, because they were, in fact, Unknowable. This was Agnosticism, the philosophy of the Unknowable." "But," asked Sir Edward, "do not the agnostics after all, by their formal relegation of theology to the realm of the 'unknowable,' assume thereby, that they do actually know enough of divine things to pronounce them to be unknowable? For how can a thing be declared unknowable without a sufficient knowledge of it? And if progress can be made in the knowledge of it, how can it be made unknowable? Hence, Agnosticism seems to involve its own contradiction."—*Times* Report, May 15, 1882.

As to the above, however great the misnomer may appear to be, it is exceeded in the flagrant audacity of an openly-avowed infidel talking about "his theological opinions!" It is a kind of speech as self-contradictory as to talk of a circular square!

By the way, the argument which Sir Edward Fry employs on his remarks upon Agnosticism is very lucidly put by Professor Flint in his "Special Objections to Materialism," p. 150.

"He may cease to think of matter *per se* as possessed of definiteness and form; he may drop out of his conception of it one distinctive property after another; he may resolve it into conditioned, and even into unconditioned force, but the self-contradiction will cling to him at the last as firmly as at the first. To get rid of it he may commit mental suicide by casting himself into the abyss of the 'unknowable;' but it will hold on by him then more triumphantly than ever, and it will not be shaken off, until he confess that the 'unknowable' is at least known not to be devoid of knowledge, any more than of force."

picture, the different phases of unbelief, "That infidelity in all its forms, from paganism in the earlier times, to the philosophical, metaphysical, sceptical, unbelief of the present day, is not unintentional error, but *the wilful corruption of known* truth, and therefore *an undoubted sin.*"

These words, perhaps, will sound harshly in the ears of some objectors. The rejoinder will be, "Are not the forms of unbelief various, some more marked, some less so?"

Certainly. And is not sin itself of different forms, and shaped by various degrees? Some sins are great, and some are little. And yet, whether great or little, they are as distinctively called "*sin.*" And the least, we are told, ought to be conquered, lest the littleness should become hardened into a distinct habit[e] of thought. This is no other than the very mode of argument[f] adopted by the Bishop of London himself in his excellent little book called "The Sinfulness of little Sins."

The late Bishop of Durham, therefore, puts all the possible forms of unbelief *under one category*, his feelings being aroused the more, when he charges the "*educated*" and "*enlightened*" with a heavier responsibility than the neglected or obstinately ignorant. And yet he adds, in self-defence, "Let not these remarks be misconstrued, as tending to discourage mental cultivation, or to circumscribe its limits within any exclusive privileges of rank or station." "The error lies not so much in excess of education with respect to human knowledge in any class of the community, as in *the defect of it*, with respect to its subjection to the *Divine will*, and its conformity with the *Divine*

[e] In addition to Holy Scripture, most people know that the position laid down is Aristotelian. But the same appears as a Jewish principle, and is maintained in the Talmud. Ben Azzai said, "Hasten to a slight principle, and flee from transgression: for precept induces precept, and transgression induces transgression; for the reward of precept is precept, and the reward of transgression is transgression," i.e. "the performance of duty is rewarded by an increased facility of subsequent performance."—*Pirke Aboth*, quoted in Taylor's "Sayings of the Jewish Fathers," p. 80, with note.

[f] E.g., in p. 42, we read, with regard to "The Sins of the Temper:"

"Repented and indulged, they add to the strength of passion, and nourish anger into a powerful habit. They weaken our self-control, and they lay us open to the attacks of other, and, perhaps, *deadlier sins.* They form links, small, perhaps, singly, but strong, when knit together, of that chain of little sins with which Satan delights to bind unsuspecting souls." No one can doubt the truth of this; only let us apply the principle to other matters which affect human belief, or human conduct.

commands." "The largest intellectual acquirements *without* religion are not merely imperfect and defective, viewed as a system of education, but they are *positively dangerous and mischievous.*"

These are the Bishop's words, not mine.

"In every station of life," his Lordship proceeds to remark, "the greater the attainments, the greater are the means of doing evil as well as good; and the more numerous are the temptations to misapply those attainments." "Whatsoever may be the errors or obliquities resulting from gross ignorance and entire neglect of instruction, frequent are the instances of scarcely less palpable deviations from truth and rectitude, among those who stand foremost in the ranks of literature and science. Against such deviations, the most scanty pittance of scientific or literary acquisitions, accompanied with a deep-rooted sense of religious duty, will be an infinitely better security than all that worldly wit or wisdom can devise, where that is wanting[g]."

But once more, his Lordship, rising from speaking to his general audience, and addressing himself more especially to the most learned and intellectual portion of his hearers, continues to pronounce "*ex cathedrâ*"—for the occasion was that of H. M. Justices of Assize[h] attending divine service at the Cathedral of

[g] Preached July 27, 1834. This is nearly half a century ago; and, it may be said, many things have happened since that time to leave their mark upon the English Church. Suppose, then, we take the following extract from one of the "Baird Lectures" in Edinburgh, written by Professor Flint, an instructive and able writer, delivered in 1877, and published 1879.

"It is impossible," says he, "that this country will be afflicted to any great extent with a fever of idealistic pantheism resembling that which Germany has passed through." "What chiefly threatens us is Atheism in the forms of *Agnosticism*, positivism, secularism, materialism, &c., and it does so directly and seriously. The most influential authorities in science and philosophy, and a host of the most popular representatives of literature, are strenuously propagating it. Through the periodical press, it exerts a formidable power. It has in our large centres of population Missionaries" (*sic*), "who, *I fear, are better qualified for their work than many of those whom our Churches send forth to advocate, to the same classes, the cause of Christianity!*" "There is a great deal in current modes of thought and feeling, and in the whole constitution and character of contemporary Society, to favour its progress." "Atheism is a foe, opposition to which, and to what tends to produce it, *ought to draw together into earnest co-operation all who believe in God and love their country.*"—Book entitled *Anti-Theistic Theories;* publishers, Messrs. Blackwood and Sons.

[h] Touching the last points to which the preceding paragraphs refer, as well

Durham—"None will better know how to appreciate the truth or importance of these observations, than those who, on such occasions as the present, go forth to the periodical administration of the laws of our country throughout the community. None have so frequent opportunities of *observing* how frail is the tenure of integrity, of upright dealing between man and man, of social and personal ties, of control over the lusts and passions, of everything that constitutes mutual confidence or mutual security, where the all-prevailing principle of religious obligation is either extinct, or dormant. Every catalogue of offences that comes before our criminal courts, every vexatious litigation that calls for judicial decision, tends, more or less, to prove, that neither the dread of human laws, nor the influence of character and reputation in society, nor even the stronghold of personal self-interest, will avail to overcome the propensity to evil-doing, unless a still more potent feeling predominate; that '*Fear of the Lord* by which men depart from evil[1],' and which is emphatically

as the general ground which a late Bishop of Durham covered in his Assize Sermon so many years ago, we shall see by the following extract from the London "Times," that our moral and social advancement falls very far short of what many have been expecting, as the result of our present educational efforts. "When people are in peril of being inflated with pride, with flattering statistics," it remarks, "they have only to look at the other side of the picture. Notwithstanding the advance of education, the growth of temperance, the multiplication of churches, and the victories of science, they may find, easily, correcting and chastening reflections, by entering one of our criminal courts" (this is the test which the bishop gives us), "or by reading their daily records." "They will see there how superficial are the efforts of those vaunted triumphs, how strong and perennial are the old causes of vice." "All that is worst in the national character comes to light." Again from the same, "Hard by our churches, and schools, and museums, live people who are as much outside the range of these institutions as a besotted Papuan." And then, as a kind of warning, drawn from old historical facts: "The old civilizations fell by reason of the barbarians who *came from without*," the question being one as affecting ourselves, "Were they more formidable than the barbarians *who dwell within, and seem bred by our modern civilization?*"—*Times* leader, May 6, 1882.

[1] There is a remarkable saying, somewhat bearing upon this point, drawn from the Talmud (Pirke Aboth). R. Chanina ben Dosa said, "Whosesoever fear of sin precedes his wisdom, his wisdom stands; and whosesoever wisdom precedes his fear of sin, his wisdom stands not." Again, he used to say, "Whosesoever works are in excess of his wisdom, his wisdom stands; and whosesoever wisdom is in excess of his works, his wisdom stands not." With regard to the former, it has been remarked that different meanings have been

said to be '*The beginning of wisdom*'—the very root and foundation of all that is good and acceptable in the sight both of God and man."

It may be deemed a small compliment (for the act would come rather as a matter of course) that a request was made by the two learned Judges of Assize that the sermon should be published; only the request came from two such distinguished lawyers as Lord Chief Baron Lyndhurst (before Lord High Chancellor of England) and Mr. Baron Gurney — learned and eminent men, therefore, who endorsed this expression of faith in its Christian wisdom.

Perhaps it may be deemed a greater honour, at a subsequent Assize, when the spirit of the Bishop had left his spare and sickly body, but with a mind, heretofore, always vigorous in this bold and unflinching champion of revealed Truth, that Lord Chief Justice Denman is reported to have uttered, in his Charge to the Grand Jury assembled, on a like occasion, in the same city: "There never was a Prelate who more deserved the good opinion of the public than the lamented individual to whom he referred. His piety and *learning* placed him among the highest names of England; while his numerous acts of charity and munificence, and *his love of truth and justice* made him entitled to their warmest gratitude and praise as one of the greatest benefactors which this, or any other country, had ever been blessed with."

Yes! and, moreover, the death was a *heavy loss to the Church herself*, when the truth of *her dogmatic teaching* should be in jeopardy!

assigned to the precedence of the fear of sin to wisdom. It may denote either that a man's fear of sin should be instinctive, or a motive urging him to the acquisition of knowledge as a safeguard againt transgression, into which his ignorance might betray him. The former interpretation is to be preferred, "*A man should build upon the foundation of religious feeling*, rather than upon *philosophy*."—Taylor upon the *Sayings of the Jewish Fathers*, Pirke Aboth, p. 63, note.

On the same topic may be added, from the same source, the following sayings: "A wise man and a sin-fearer, What is he? . . . Lo! he is a workman with his tools in his hand. A wise man, but not a sin-fearer, What is he? He said to them, He is a workman, who has not his tools in his hand. A sin-fearer, but not wise, What is he? He said to them, He is no workman, but has his tools in his hand."—*Ibid.*

Legislation for the Church should be administered by Christians, if not absolutely by Churchmen.

To return, once more, to the grave and serious discussion in the "House of Lords," it would be unpardonable to forget one incident, amid the many painful expressions that marked the differences of opinion. Lord Balfour of Burleigh thought, that if "that were admitted *by both sides*, viz. that it was not possible to take any security for the opinions which a Member of Parliament, or noble Lord, might hold before admitting him to the privileges of Parliament, "it *afforded a strong argument* against allowing Parliament, so *constituted*, to *legislate in spiritual* matters connected *with the Church of England*." "He did not desire to say more than this, that the *existence of this admitted fact* afforded a *strong argument* for giving *a larger amount*[k] of power to regulate *its own internal* affairs to *the Church* of England."

One addition may be made, in reference to Lord Redesdale's motion itself, that, besides all the other objections mentioned at the time *against* the acceptance of the Bill, there is this which was not mentioned, viz. that it would have been an *alteration* of, or else an *addition* to, the old recognised Articles of our Christian Creeds. For the Bill referred to a belief in "*an* Almighty God," not in "Almighty God." A change which could not have been made by laymen any more than by ecclesiastics *per se*. But the acceptance would have been tantamount to this!

[k] The first is not less apparent, if we look at some of the legislation of the past. See Append. B.

CHAPTER IV.

ROMAN LAW.

"And so we went toward Rome."—*Acts of Ap.* xxviii. 14.

WITH the necessary interruption of the thread of our subject, the question now meets us, whether, on reaching Roman Law, we have adhered to strict accuracy, in making the Greek to precede the legal system of the Jew. For it may be alleged, chronologically, our inquiry, in the latter case, has gone back to the age of Moses, who, by many generations, preceded the time of Solon, and those who may be called the pioneers of Greek jurisprudence.

Indeed, we have already stated (p. 70) that Plato, who contributed so much to the fame of his countrymen and their progress in the science of legislation, is said to have been brought before the High Court of the Areopagus, for mentioning the name of Moses, as though even then the Jewish name could not commend itself to the fastidious taste of that more Western people. Whether the statement is correct, or otherwise, it is evident that there was not, neither could there be, much intercourse or sympathy between the two nations. See, however, 1 Maccab. xii. 20.

Moreover, the wish is, without adherence to strict chronological order, to place the facts where the points at issue can be best explained, or illustrated.

Without saying more, then, we can safely repeat the remark (p. 36) that there is a strong affinity between the studies of the Theologian and the Canonist[a], insomuch that the opinion has been ex-

Theology and Canon Law.

[a] It is much to be regretted that Ecclesiastical Law is not included among the subjects for examination in the Honours' School of Theology at Oxford. The books which are appointed by the authorities for study are very numerous (*Univ. Gazette*, June 23, 1881). Yet Ecclesiastical Law is practically

pressed, that 'a man cannot be a good Theologian without being a good Canonist' as well; though the converse of the proposition has been denied.

And yet there is such a difference between the Theologian and the Canonist, that, while looking at the same facts, because they look at them from a different point of view, *probably, at times*, they will reach different conclusions.

For instance, in the case before us, the Theologian, when he comes to grasp his facts, will naturally fall back upon the Jewish Economy as the rightful parent of all Ecclesiastical Law. He will remember how St. Paul declares that the one was the shadow of the substance that was to be, that the one was the type of which the other is the antitype, that the "Law was our schoolmaster to bring us unto Christ," i.e. that the Law of one Economy was so stamped upon the other, that Christians, in course of time, borrowed[b] *much* from it; and so close was the connection, that Law itself formed no exception to the statement.

Furthermore, we know, how in the length and breadth of the great Roman Empire[c], the Jews were scattered here, and there, and everywhere; and whether they acted as friends, or as enemies, the result was, an interference with, or an impression upon, Christian legislation.

omitted. The Canons of the first four 'General' Councils, though historically important, are of little practical use to the clergyman or the Ecclesiastical lawyer in matters of everyday life. For the first ten centuries of Church history the terms 'Theologian' and 'Canonist' are identical.

[b] "Non inficias ibimus, nonnulla sive cærimonialia, sive judicialia Hebræorum præcepta nostris legibus tum ecclesiasticis, tum civilibus comprehendi; id quod plurimi egregii viri, et præ cæteris Petrus Pithæus libello, cui titulus 'Collatio legum Mosaicarum cum Romanis,' demonstrârunt."—*Selvagg.*, lib. i. tit. i. c. 24.

[c] "The fortunes of the Jewish people had experienced a favourable change since the reign of Hadrian. The violence of the Roman persecution had been transferred to the Christian Church, while they gradually recovered their strength and obtained permission to gather and make proselytes to their Creed—they became an influential and political body. Severus, A.D. 194, is first said to have extended his regal favour towards them. Heliogabalus and Alexander, natives of Syria, gave them new privileges, and the latter went so far as to place the image of Abraham in his private chapel among the objects of his ordinary worship."—*Card. Newman's Arians*, p. 11.

Views of the Canonist on the same question.

The Canonist, however, irrespective of any theological bearing, would consider the point as one rather of *philosophical accuracy* than as the outcome of any religious preconceptions. Without denying, at all, what the Theologian advances, the Canonist adds, that history claims the existence of another cause, more direct, more influential, in moulding the special legislation we have to consider.

Let us remember then, that, however much of the Jewish element was introduced into it, the antagonism of the Jew to Christianity, at first, was greater than that of the Gentile.

Indeed Scripture history informs us, that because the Jews would not receive the Gospel, the great gift became, as a consequence, offered unto the Gentiles.

Further, we are aware, that above all the nations that preceded them, the Roman People distinguished themselves as *Legalists;* and owing to the remarkable continuity of their history, says one[d] so well able to speak with authority upon such a subject, Roman Law possesses '*a singular value.*' And, perhaps, the most remarkable part of the fact is, that not when the political power of the nation was at its highest, but when the turning-point had been reached, *Law*[e], as a *study*, became the *feature of Roman greatness.*

It may be, that we can trace something of the cause of this in the very history of the subject, and the national idea that was impressed upon it. Their notion, in connection with Law, was not so much that of '*distribution*' with the Greek, nor yet that of '*instruction*' with the Jew. These two principles the Romans neither neglected nor undervalued, being willing to profit by those who had preceded them. But *their* characteristic was, that, whilst they ga-

[d] Sir H. S. Maine.

[e] "*Lex* generale nomen est, dicitur a deligendo, ut magìs videtur Ciceroni, quâm a 'distribuendo' *νόμος* Græcis appellatur. Nam ut illi 'æquitatis' (inquit) sic nos 'delectûs' vim in lege ponimus, et proprium tamen utramque 'Legis' est. Omnis ergo Institutio, quam secuti eligimus quod faciamus, et contrarium vitamus, communi appellatione 'Lex' dici potest."—*Spiegel's Lexic. sub verb. Lex.*

thered knowledge from their own experience, they drew to themselves by *selection* the principles and settled opinions of others; insomuch that the 'continuity' spoken of, say from the time of the 'Twelve Tables' to the end of Justinian's reign, covers a period of nearly 1,000 years!

The Twelve Tables.

The 'Twelve Tables,' then, are referred to as an Epoch in Roman Legislation. And as such, they have been called not only a great 'starting-point,' but the first '*solid ground*,' in the history of Roman Law.

In so speaking, however, we must not ignore the previous existence of this people—only, all that follows in after-times, and which served to develope their entire political being, was more dependent upon this said 'starting-point' than any previous portions of their history. Whether this arose from a feeling that, as a people, they had begun to outgrow the previous state of things, these undergoing already a process of decay; or whether we must speak still more strongly, and affirm, that the Roman power, at its commencement, and for generations subsequently, "sine lege certâ, sine jure certo egisse," as it is recorded, the words 'lex' and 'jus' being used, indiscriminately and together, to express more forcibly the same idea.

Only, by this statement, we must not suppose, that there was *no* law amongst them (for how could a body of persons be brought, and live, together, without law?) but that their laws, however agreed to and acted upon, had not been systematically arranged, and reduced to writing. So that it comes to well-nigh the same thing to say, that the Roman people were without laws, as to know that those Laws had never been established as the written Code of the Land—a condition of things (we have this on the authority of Tacitus) which was not so very different from that of their neighbours around them.

Roman Commission to inquire into the Laws of Greece.

Now the Laws of the Greeks, whom the Romans visited by means of what may be called in modern language "a Commission of Inquiry" (B.C. 450) upon the matter, which had begun to press itself upon their attention, were of two kinds,

'*written*' and '*unwritten*' (ἔγγραφοι [f] and ἄγραφοι)—a principle which the Romans not only approved of, but embodied in their own system. And for the 'unwritten,' the Romans had the double antecedent authority of the *Spartans* as well as the Athenians. Indeed, the former, as a people, so unlike their neighbours and great antagonists in many things, differed from them also in this, that *their laws* were all '*unwritten*,' the fact being, that they committed to memory what they observed as Statutes, whilst the Athenians rather guarded what they found enacted in their 'written' laws.

Custom equivalent to Law.

And here, before proceeding further, it may be stated, that with both of them, Greek and Roman, the 'unwritten' law of '*Custom*' impressed itself with a pre-eminent force, insomuch that the Romans, in succession, spoke of it, when appealed to, as a *statute itself* (*leges imitantur*).

It must not, however, be supposed that the principle 'consuetudines leges imitantur' is peculiar to the Greek or Roman system; for the same principle may be found illustrated in the Jewish Jurisprudence, and is adopted, in its fulness, into our own English system.

It is, however, found in its fullest force in primitive systems of law which are, in fact, almost entirely composed of approved customs. It is, moreover, thoroughly recognised in the Canon Law. The custom of the Churches had always the greatest weight in the determination of any ecclesiastical question.

Again, both the Jewish and Gentile elements of the Church were well accustomed to the principle; and this accounts not only for the adoption of the principle itself into the Canon Law, but for the grafting in of many details of Civil Law which had become familiar to Gentile Christians, in their capacity of citizens of the civil polity [g].

[f] See *Hunter's Roman Law*, Pref.

[g] See also below. According to Lancelot (i. 1), the Canon Law consists of the precepts of *the Divine Law, of usage,* and *of constitution.*

The System of the Roman State Religion favourable to rise of Canon Law.

Now, to understand how the Canon Law grew under such a System as Roman-Heathenism, when Idolatry, in various forms and degrees, was in direct antagonism to Christianity, we must remember, first of all, that one of the peculiarities of the Roman system was, its close connection with the Civil Polity. True, the Heads of the religion were not a priestly caste, i.e. to speak accurately, not separated from their fellows for a specific purpose.

Nevertheless, there was a stronger tie, which acted concurrently with a subsequent condition of things, in that *the whole body of the people* had a place in the religious machinery of the State. Religious ceremonies accompanied them from the cradle to the grave. Every important act of their lives, in business or pleasure, was sanctioned by some rite or other. Moreover, each individual, forming, as he felt himself, an important factor of the Commonwealth, was also under the guardianship of his own tutelary deity.

This feeling, so strong in the individual, became still more powerful, when acting upon the community as a whole. Therefore, for peace or war, in their deities they recognised the *reality of a 'superintending providence*[h],' when they consulted as to whether this or that course should be adopted, or which should be avoided.

Putting, then, the two ideas together, says Lactantius, when pleading on behalf of religion and religious wisdom, "If there are those who give to the world their ideas upon Civil Institutions, how much more[i] should we follow the

[h] "Et alii nonnulli qui non putaverunt deos esse; quid aliud effecerunt, nisi ut nulla esse providentia putaretur? quos tamen et cæteri philosophi, ac maximè Stoici, acerrimè retuderunt, docentes, nec fieri mundum sine divinâ ratione potuisse, nec constare, nisi summâ ratione regeretur. Sed et M. Tullius, quamvis Academicæ disciplinæ defensor esset, de providentiâ, gubernatrice rerum, multa et sæpè disseruit, Stoicorum argumenta confirmans, et nova ipse afferens plurima: quod facit in omnibus philosophiæ suæ libris, tum maximè in iis, qui sunt 'De Naturâ deorum.'"—*Lactant. Instit.*, lib. i. 11.

[i] "Et, si quidam prudentes, et arbitri Æquitatis, Institutiones Civilis Juris compositas ediderunt, quibus civium dissidentium lites contentionesque sopirent, quanto meliùs nos et rectiùs divinas Institutiones literis persequemur;

same inquiry upon matters of far greater importance, viz. Divine Institutions, wherein lie our hopes, and immortality, so speaking of God, that we may quietly destroy (*sopiamus*) deadly superstitions and the worst of errors."

Further, for all practical purposes, the secular and sacred (if I may so speak of the last) were so united, that, in the early stages of Roman history, the King decided the cause (suppose it were even of the secular kind) not as King, but by virtue of his other office as *Pontifex Maximus*. Or else, if he did it by others, it was through the action of his subordinates, in the self-same office. Which feeling, perhaps, if by no other law, at least by the law of '*custom*,' never left them; so that with the development of 'Civil Law,' when Christianity began to be received, 'Canon Law,' as the Law of the Church, *gradually grew up with it.*

The Canon Law was from the beginning under great obligations to the Civil, and the form in which it appeared in the Decretum of Gratian was evidently borrowed from thence. The division of the Canon Law by the Canonists into the law relating to the rights of persons and things, the proceedings in Civil suits, and the prosecution of crimes, was, obviously, in imitation of the Roman lawyers[j].

It is, however, noteworthy that although the Canon Law derived much of its outward form from the laws of Rome, the morality of the former is elevated so as to be made more fit for the government of Christian people.

Distinction between 'Jus' and 'Lex.'

We have elsewhere spoken of 'jus' and 'lex' as correlative terms[k], so that the one is often used, and correctly so, for the other. Hence if we derive 'jus' from 'jubeo,' and therefore in its signification as implying something which we are bidden to do[l], or not to do, it follows that 'Lex' has the same

in quibus . . . de spe, de vitâ, de salute, de immortalitate, de Deo loquemur, ut superstitiones mortiferas erroresque turpissimos sopiamus."—*Ibid.*, l. i.

[j] Reeves, vol. ii. p. 114; vol. iii. 43.

[k] "'Jus' generally means 'Law' as distinguished from 'Lex' or Statute-law."—*Hunter's Roman Law*, Pref.

[l] "Jubeat," says Seneca, in speaking *de Lege*, "non disputet, nihil videtur mihi ineptius quàm cum Prologo," &c., Ep. 95. — *Bacon's Works*, vol. i. p. 817, note.

binding effect. For law in all its ramifications has been defined "as a command .... to all persons in given circumstances to do or not to do, which persons will be visited with some evil .... if they disobey."

But there is yet another point of view in which the term 'jus' should be examined, as to its root or signification. The point, and which widens the meaning of the word, was familiar enough to the Roman mind in the best period of its literature, in that, with regard to practical life, it directs a man's aim to that which is 'good,' and 'just,' and 'equal,' whilst averting the same from all that is 'evil,' and 'unjust,' and 'unequal.' Consequent upon such an idea, we find the term 'jus' embraces within itself all kinds of Law which can be brought under the category referred to; so that, in this comprehensive sense, it becomes equally applicable, whether predicated of Divine or human Law. Hence Bracton, our great English legal writer, but, of course, speaking more as a 'Civil' than as an 'Ecclesiastical' Lawyer[m], says of it, in a most enlarged sense, "Item Jus quandoque ponitur *pro jure naturali*, quod semper bonum et dignum est, quandoque *pro jure civili* tantùm, quandoque pro prætorio tantùm, quandoque pro eo tantùm quod competit ex sententiâ." (lib. i. c. 4, p. 3.) But, then, here Ecclesiastical Law is omitted altogether. Notwithstanding, if, after the high authority of Bracton, we appeal to the Canonist or Ecclesiastical Lawyer, we shall find that the wide sense in which Bracton uses the term is sometimes made still wider, insomuch that Canonists even place it as an element distinctive from 'Civil Law,' and with a special meaning of its own.

[m] I am obliged, in strict accuracy, to be careful in making this statement, for Bracton was really an ecclesiastic: "He had studied the Civil Law, was a judge in 1245 (A.D.), and died about twenty years afterwards."

The next statement is interesting, as well as important: "Lord Coke speaks of Bracton's legal work in the highest terms, and as one of the great sources of our" (English) "Law;" though he was probably not aware that it was founded on the Roman Law, and that "a great part of it" (instead of being his own) "is taken, indeed, from the Institutes of Justinian."—*Reeves' History of the English Law*, edited by Finlason, Introduction, p. 87, note. See also ib., vol. i. p. 533.

Word 'Jus' sometimes applied specially to Canon Law, and implies 'Equity.'

Now as the 'Jus Divinum,' or Divine Law, consists of two kinds, 'natural' and 'positive,' so the 'Jus humanum,' or human law, is of two kinds also, the 'civil,' which implies all that is laid down for observance by the constituted authorities [n], and the Canon or Ecclesiastical Law, which, with its own characteristic principles, originates from a source which has yet in its fulness to be considered. But again, in looking at this 'Jus humanum' in its more restrictive meaning, our attention is drawn to the distinctive position which Ecclesiastical law took up, in an *early* period of its existence, in the relation which it bore to 'Civil Law.'

But 'early' I repeat, when the word 'Lex' being more specifically applied to 'Civil Law,' the word 'Jus' became more appropriated to 'Canon Law,'—another distinction following subsequently, to which we need not refer further here, viz., between 'Jus Canonicum' and 'Jus Ecclesiasticum.'

Not, however, was the distinction made with such strictness, in respect to the former, that the order of the terms could never be reversed, the 'Jus civile' being sometimes used as the equivalent for, or placed in juxta-position with, 'Lex Ecclesiastica.' But admitting the exception, it is enough for my purpose, if I can shew that the word 'Jus' *has often* been so appropriated [o], giving, therefore, a value to Ecclesiastical Law, especially when associated with all that is implied in the definition already given, that its aim is *to direct to what is 'good,' and 'just,' and 'equal.'* A truth which becomes the more apparent, if we practically

[n] "Ast non negaverim, alterum alteri sibi invicem auxilium præstare, namque haud rarò et Sacri Canones jus Civile confirmant, vel moderantur, et leges imperatoriæ jus canonicum sequuntur. . . . Adhæc alterum ab altero suppletur, atque adeò in ambiguis interpretationem accepit."—Quoted in *Selvagg.*, lib. i. tit. ii. c. 11.

[o] "*Fugit enim Ecclesia imperiosum legis* nomen, quod vim civilem et violentam corporis cöercitionem continet; ac potiùs canonum Græcâ et leniori voce usa—est, nempe regularum, quibus animus regitur, non corpus stringitur."—*Ibid.*

Also "præterea a rebus, de quibus tractat, et a personis, quæ eo potissimùm utuntur, dici etiam consuevit jus sacrum et ecclesiasticum."—*Ibid.*, c. iii.

apply the test to some of those great principles which originate from this source. For Equity itself[p], as we have already remarked, is not only said to be superior to the written Law, but at times, that all may be done in accordance with strict justice, it has the merit of being '*the corrector*' of it.

But if we prosecute the inquiry a little further into detail, we shall find that the Church in her Law, when *left to herself* for guidance or administration, is wont to lean to the side of *Mercy* as well as strict justice, in the practical application of her principles. "Left to herself," I add, because not unfrequently—I do not say *always*—the very acts with which she has been charged of an opposite character, have sometimes been the result of *the* '*Executive*,' and contrary *to the spirit of her own Laws!*

Let us take a single illustration to demonstrate the rela-

[p] So important is the principle referred to, that it will not be out of place to add a little more.

It is curious to trace men's ideas and practices upon the subject of Law. What we now consider, and have every reason to consider, as a great boon in the shape of '*Equity*,' was an idea which the ancient Greeks and Romans had fully grasped as to its beneficial effects. Nevertheless, in development, it was a plant of slow growth with ourselves, even with the aid of the Church, before it firmly took root, as an essential part of our Legal system.

From the Year-Book of Edward IV. a passage may be cited where one of the judges, probably a little less ignorant than the rest, "declared that it was entirely through ignorance that suitors were driven into Equity!" It is a comfort to find, that the charge of '*ignorance*' can be alleged against another profession besides the clerical!

It need hardly be stated that in the reign of Henry VIII. the jurisdiction of 'Equity' over cases of law was assisted, and established, by the eminent Sir T. More.

To show the value of the principle alluded to, let us take an instance of the contrary without the counterbalance of Equity. I take the illustration from Reeves, to whom I am indebted for this as well as many other favours. "If a man who had paid a debt, and omitted to take a proper acknowledgment (it may seem scarcely credible, but it is the fact, that) if the debt were by deed, there was no remedy at law without an acquittance by deed! If a man pay a debt for which he is bound by deed, without taking an acquittance by specialty (i.e. by deed), *he shall have a remedy in chancery* (Year-Book, 7 Hen. VII. 11). That is, he was to be made to pay the debt twice over, and then to commence a suit in chancery to get the money back again!!" This incredible absurdity was actually vindicated as the perfection of right reason!! See Reeves more at length, note, Introduct., p. 114.

tion which the Civil and Canon Laws have to each other, and exhibiting the influence which the Canon Law has had on the law of our own country.

A reference to 'Arbitration' was a method of settling disputes, which dates from an early period of Roman Law; and there seems no reason to doubt, that it was adopted from that source into the Canon Law, and thence, through the influence of the Church, transfused into our own law.

It was entirely consonant with the principles of the Canon Law and the Christian religion, that a peaceful method of settling disputes should be adopted; for peace, both between individuals and nations, is really in accordance with the objects of Christianity.

Peace on Earth the Message of the Gospel.

And to Christianity it is, rather than any other religious system, to which we must look for the solution of difficulties amongst rival nations. On the contrary side, it may be urged, that 1800 years have now elapsed since the Divine Message was announced to the world of "peace on earth and good will amongst men," and the question may now be asked, and which indeed was asked, and expected to be realized during the earliest period of Church History, *when* will the wished-for boon be realized? and what has Christianity really done towards its accomplishment? It may be added, that the Christians did no more than they were warranted, in their interpretation of Scripture; this being, as they believed, one of the objects, if not the *main* object[q], of Christ's coming.

It is true, that the Gospel never promised an *immediate* Peace throughout the world, or even fixed the time, in the distant future, *when* such Universal Concord might be looked for. On the other hand, the Baptist, as Christ's forerunner, when the inquiry was made of *him*, never

[q] Δι' ἀγάπην κατῆλθε πρὸς ἡμᾶς Ὁ ἀγαπητὸς υἱὸς τοῦ Θεοῦ, καὶ ὁμόσκηνος, καὶ ὁμοδίαιτος τοῖς ἀνθρώποις γέγονεν, ἵνα τὴν πολύθεον καταλύσας πλάνην, καὶ τὴν ἀληθῆ καταγγείλας θεογνωσίαν, τὴν πρὸς ἀλλήλους ἀγάπην διδάξῃ ἀνθρώπους.—*St. Chrysost. Hom.*, 73, t. 6.

thought of bidding the soldier lay down his arms as useless, and as though he were himself unworthy of that kingdom, to which he would speedily be invited? All that the Baptist replied was, simply, that such should discharge their duty, "doing violence to no man." Neither did our Blessed Lord Himself interfere, His action being comprehended in the statement which He enunciated more distinctly afterwards, "My kingdom is not of this world." Nay, He borrows for His own purposes, in His Divine teaching, and by way of illustration, the very practices of peace and *war* which belong to other kingdoms. A mode of teaching also which St. Paul adopted, after the example of His Divine Master; and of all the various illustrations which the great Apostle uses to depict the character, loyalty, and devotion of a Christian, there is none which, in his eyes, *surpasses the profession of a soldier!*

But granting, as we must do, that the early Christians were mistaken in what they deemed would be the *immediate* results of the New Dispensation,—and admitting, further, that, notwithstanding the mistakes, and the evidence of all history which speaks of the destruction and horrors of war, one nation contending against another, whether in self-defence, or for the purpose of national aggrandisement,—nevertheless, it cannot be doubted, there has been developing in the Human Conscience a *gradual* awakenment to the evils of such a policy, alternating, it may be, in preparations for war, on the plea, that such is the best guarantee for future Peace!

Amidst this uncertainty of opinion, then, has the Church done nothing towards regulating such a line of national conduct? or to express the idea in another form, Has Christianity been able to do nothing[r], because it has not been able to do everything, towards realizing the prophetic utterance, that "swords shall be turned into ploughshares, and spears into pruning-hooks," "neither shall men learn war any more?"

[r] The "Peace of God," and the "Truce of God," are excellent examples of the good influence of the Church for peace.

Modern plan of Arbitration is found in the Canon Law.

At least, we may ask, if there is this growing consciousness, that war is a tremendous scourge (notwithstanding all that has been said to the contrary, and in spite of a halo of earthly glory which has been thrown around it), whence comes the feeling, after so many centuries have passed away since the message of 'good will' was pronounced from heaven? And it is the more striking, if the feeling should begin to show itself amongst those who are the first to feel the effects of an evil, but often the last to recognise it[8]!

At all events, whether a *sense* of Christianity underlies the declaration, or not, the words of Yorkshire Workmen are remarkable: "We want no wars," say they; "we are resolved to develope our internal resources, cultivating our fields and vineyards, adding to our comforts, and reducing our burdens. . . . We believe that armies create, instead of preventing, wars —that disputes can be settled without them *by Arbitration.*" And as the first step towards this: "That Governments should at once agree upon a mutual and simultaneous reduction of armaments."

But whence comes the remedy proposed? Is the principle to be adopted *new?* or have we to go backwards for it—tracing the same to a '*Natural Law*' which commends itself to every man's reason or conscience? Whether true or not, one thing is certain, that the *spirit of Christianity is there,* whilst it is equally certain, Ecclesiastical Law has accepted, and fashioned, the principle of Arbitration for the acceptance, more or less, of succeeding generations.

'*Arbitration*,' as a principle, is closely connected with Natural Equity. The first requisite for satisfactory arbitration is that an Arbitrator should be chosen who is possessed of competent knowledge, and who is disinterested, and just. In the Middle Ages the Church, sometimes, arbitrated between contending nations. Also many private disputes were settled and law-suits prevented.

[8] "The Address of British workmen to the working men of France."—*Leeds Mercury, Aug.* 16, 1881.

This was so common in England, that special days were set apart for such arbitrations, which Chaucer speaks of as 'Love-days.'

But the argument comes out not less clearly if we trace the said principle of 'Arbitration' in another direction. To say that Law is a thing of stability is only to speak in the language of proverb. And yet, although the statement may appear paradoxical, there is no human Institution more sensitive, and conservative of itself, than the process or act of legislation. It is jealous of being interfered with, whilst it is not usual to adopt it for a mere temporary purpose. We have seen how careful the Greeks were on this point.

English Law Courts formerly jealous of Arbitration.

But to show the power of Arbitration, and the influence it has been gradually gaining over our own system of Jurisprudence; in former times our Courts of Justice *exhibited*[t] considerable jealousy of agreements by which parties sought to oust the jurisdiction of the public Tribunals, and adjust their differences by Arbitration. A jealousy which would seem the more unreasonable, if we consider the possible unfitness of a Tribunal composed of twelve ordinary citizens, unskilled, it may be, on the subject-matter of the litigation, whilst guided by a judge skilled, it may be, only in the technicality of the law, to unravel scientific, or special, complications.

This jealousy does not exist *now* to the same extent, as

[t] This is not a mere general observation set down at random. It is interesting to trace the principle referred to:—

Thus, in the "Year-Book," it was said, speaking of challenges to jurors: "If the plaintiff and the defendant do both refer themselves to the arbitration of certain persons, to act for both, it would be good, that is, where one side chooses one, and the other, another; there, although they are to be on different arbitrations, yet as each is unknown to the other, it is good cause of challenge" (*Year-Book*, 23 Hen. VI. 39). "Arbitrations have always been allowed in our law, although some attempts were made to confine their jurisdiction (14 Hen. IV. 19). In Lord Coke's time it was not unusual for men to agree that differences between them should be referred to the arbitration of 'neighbours' (*Co. Litt.*, lib. i. c. vii. s. 67, p. 53); and although questions were raised as to the power to refer *future* differences, no question was ever raised to present differences."—*Reeves' History of the English Law*, ed. by Finlason, Introduct., p. 103, note.

appears from the provisions of the Common Law Procedure Acts, and the Judicature Acts.

In the large towns there is a considerable feeling in favour of the establishment of Commercial tribunals, under the presidency of commercial men. So in many Admiralty cases, 'Brethren of the Trinity House' sit as Assessors [u].

But still, the scandal is too often seen of expensive trials, with full complement of witnesses and counsel, *ending* abruptly in a reference to a private 'Arbitration,' after expense and trouble have been uselessly incurred in preparing for a trial, and which arbitration, if adopted in the first instance, would have served every purpose. Nevertheless, however slow the progress, it is a step in the direction I am contending for.

This, however, perhaps, is no more than what might be expected in the natural course of things as the outcome of the historical connection that subsists between 'Common' and 'Ecclesiastical' Law. Nay further, there was a time when the Common Law contained within itself, at least in some measure, the Ecclesiastical Law of England.

The word 'Compromise' derived from Ecclesiastical Law.

We may reach the same conclusion in another way; and this time it shall be upon the point, which, *à priori*, cannot be considered a popular principle, and therefore, which, *per se*, does not commend itself for general adoption. It is

[u] To sum up, briefly, the history of this principle with regard to ourselves, we may safely affirm, that notwithstanding the changes it has undergone, the principle is gradually coming back to us, and happily so, which existed in stronger force in the earlier period of our history than subsequently, if we compare the following statement with what has been alleged in the text: "The arbitration of neighbours, as it is the earliest form of civil jurisdiction resorted to, so it is the most remarkable, that it is invariably recurred to in the age of the highest civilization, as most convenient, and far preferable to hostile and formal litigation," i.e. whether public or private. "The whole tendency of our own procedure has been for ages, and is now more strongly than ever, to encourage arbitration, and substitute it as much as possible for hostile litigation" (of whatsoever kind). "In the same law it was ordained, that in the hundred, folk-right should be pronounced in every suit, and that a term be fixed when it should be fulfilled, and that the sheriff hold a court in each hundred once a-month (Edward II.)."—*Reeves' Hist. of English Law*, vol. i. p. 24, note.

analogous[v] to 'Arbitration,' for it seeks the settlement of a difficulty, whether of a personal, or social, or political kind. And therefore so extensively is the principle employed, that its influence, at times, covers not only private, but public conduct.

It may be added, whilst 'Arbitration' trusts by mutual agreement to a third party for the solution of a difficulty; this seeks the same end by mutual concession, on the part of the aggrieved, and which is called "the law of compromise[x]."

Now whence does the principle come? I have already said that the tendency of the Church, when left to herself, is towards Peace as well as Justice in its strictest form. Still, as is the case with respect to Equity, whose office is to moderate the latter, so '*compromissum*,' or compromise, is the term which *Ecclesiastical Law* has given us, shall I say, to take the place of Arbitration?

As a confirmation of the aforesaid remarks, we cannot do better than quote the example which our late Parliamentary proceedings, with regard to the Irish Land Act, have furnished us with. There is no need to offer an opinion[y] upon the Legislation in question. It would

[v] See Reeves again, vol. iii. c. 25, p. 50, note.

"Corp. Jur. Canon., 187. A submission to arbitrators is called by the Canonists '*compromissum*;' hence our word compromise. Thus from the Canon Law was derived that most valuable and beneficial proceeding by arbitration which it has been the object of modern legislation to enforce and extend as much as possible." Will it eventually over-ride the universal thirst for war?

[x] That is, '*compromissum*,' or 'a promise together.'

[y] One may, however, venture to re-state the wise assertion, "That there is nothing new under the sun." Unconsciously, perhaps, to many of us, there is an appearance of the *old Roman spirit* pervading the whole scheme of the Act. "The Roman could have his 'villa,' and, around it, the farm or land in his own personal occupation; but then, to secure the cultivation of the root of the land for his support, he would have to allot it out in portions to free-labourers, called 'coloni' (*a colendo*), attached to the soil, but not slaves. Hence 'villicus,' a husbandman or farmer, also 'villanus,' a farmer of a village, 'conditioni colonariæ addictus' (Bud.). These, and such like terms, be it noted, and the state of things they indicate, were well-established where the Romans were."—See *Reeves' Hist. of English Law*, Introduct., p. xi. note.

"Si quis prædium vendere voluerit, retinere sibi transferendos ad alia

be travelling out of the record to do so, my object being, simply, to show that the issue would have been *impossible*, without the application of the principle under consideration. Every one saw the difficulty. Some ventured to predict 'a collision between the two Houses of the Legislature;' day by day utterances of opinion were very freely expressed, through the ordinary channels[z] of public intelligence.

The question was suggested, "whether, without departing from the principles laid down, it might not be possible to arrive at a reasonable *compromise?*"

Again, "outside the sphere of partizanship," it was alleged, "there is only one opinion, and that is, that a *compromise* must be found."

Once more, "No doubt Liberal and Conservative Statesmen have alike cause to perceive more clearly the dangers *of an impracticable* and unbending attitude," as well as the narrowness of the issues to which the differences between the two Houses have now been reduced.

It is not too much to say, that the word in its practical use is often looked upon with suspicion[a], since, if the state-

loca colonos privatâ pactione non possit," (*ibid.*, p. xii.) "Further, it was a first principle of the Roman Law that the property in *land* must *emanate from the State*," (*ibid.*)—*Times, Aug.* 16, 1881.

[z] I have put the two principles, 'arbitration' and 'compromise,' very near each other, because there is some sort of an analogy between them. Whilst on one day the "Times" speaks of 'compromise,' on another, 'arbitration' is the *word* adopted with reference to the same Bill.

The following is the summing up of the entire proceeding: "There is now no longer any need for the politician, professional or amateur, to study its principles, or to wander through the mazes of its details; and the most conscientious public opinion in the world is henceforth relieved from the painful duty of endeavouring to understand it." (And as to the future) . . . "Their work" (that of the Commissioners) "being more of the nature of '*arbitration*' than of strictly judicial decision, will infallibly be criticized from a more personal standpoint than are the decisions of a Judge."—*Aug.* 25, 1881.

This appears to be quite correct, with one omission. From whence has our Parliament derived the two principles alluded to? The Church, oft neglected, sometimes despised, nevertheless, in her Law still lives, and calmly influences *secular* legislation in its *practical* as well as initiatory stage!

[a] "In plain words, people said that the Lords had been 'squared.' Mr. Gladstone objected to the use of the word 'compromise,' at least, he said, it

ment is correct, even an eminent Statesman of our own demurred, that the term should be applied as descriptive of his own public policy.

Nay, the objection is a general one, under the impression, that the issue of it is only gained at the cost of some higher virtue. Whereas, it is not the use, but the *abuse*, of the principle that is worthy of condemnation: otherwise, the Church in her dealings with the world would never have originated, sanctioned, and adopted it, which gives, if I may so speak, *a sacredness* to its character. She adopts it to avoid greater evils, when firmness of purpose is no longer a virtue, but in its opposition degenerates into an act of useless obstinacy!

The Church will not compromise her Faith.

But can this be a true description of the Church, which has often been little thought of, and even maligned as implacable and unbending in the administration of her own Laws, when she has been permitted to administer them? When once she has spoken, it has been asserted, it '*is once and for altogether.*' How true of her Creeds! How has she been assailed there, with one objection after another, touching this proposition, or that! How heavy is she in her denunciations! too bold for some to hear, and who would gladly, if they could, silence, for ever, her plain categorical statements!

The truth lies here, as we shall see when we come to look more particularly into the Creeds referred to. In ordinary secular matters, public or private, when no great principle is at stake, the Church leans, for the sake of peace, to what tends towards unanimity, reconciliation, and compromise.

But in the higher sphere, when God's own Truth becomes the question in dispute, as *His* Witness and Teacher, as *His* representative with a human instrumentality, the Church says, there is here no room for *compromise*. And yet even this is no more than what her *Divine Master has Himself declared*, when two principles are in direct an-

was a word he did not wish to apply to the proceedings of the Government with regard to the Bill."—*Daily News*, *Aug.* 16, 1881.

tagonism, "No man can serve two masters," for obedience to the one implies, in the very terms, a renunciation of the other!

For the present, I shall content myself with the two points adduced, as a help to my argument; especially as one sees that Canon Law is daily assuming a far more important position in the public mind, than formerly.

A late contribution is a valuable work on "Specific Performance" by Mr. Justice Fry [b], of which a new edition has recently been published. No more is said by his Lordship than what is true and right. But being from the pen of a high legal authority, not an Ecclesiastic, the statement is made, that that *most important branch of our Jurisprudence* sprang not from Civil Law [c], but *from Canon Law.*

Connection between Civil and Canon Law.

And this brings us, once more, to the point of connection between Civil and Canon Law. And therefore, the question suggests itself: what is the 'Lex Civilis' of which we have been speaking, the same being the real forerunner of Ecclesiastical Law [d], and with which the latter appears so closely

[b] Mr. Justice Fry on "Specific Performance," pp. 8, 9, cites a chapter from the title *De pactis*, in the Decretals of Gregory (*Decret. Greg.* ix. lib. i. tit. 35, c. 3), which is headed "*Judex debet studiosè agere ut promissa adimpleantur*," the Canon itself being "*Studiosè agendum ut ea, quæ promittantur, opere compleantur.*" Now in *Corp. Juris* (edit. 1730, p. 166) this Canon is said to have been made in the year 600.—See *Law Times, Aug.* 20, 1881.

[c] "The Civil Law, being taken, is the Law that every particular people formeth for itself, as the Athenian or Lacedæmonian, in which sense also the Law of England may be called 'The Civil Law;' for that it is the proper law of the nation; but to speak more strictly, the Civil is the Law which the old *Romans used*, and at this day forms the 'Common Law' of many, perhaps most, of the well-governed among the nations."—*Ridley.*

[d] Although in form, and many details, the Canon Law is derived from the Civil Law, there are some very deep and important differences which must be noticed. The objects of the Canon Law were (in theory) heavenly. It was the code for no earthly state, but for the Church, the City of God. So its objects with regard to the individuals who came within the scope of its jurisdiction were different. It did not desire to punish crime, but to reform sinners. This was the object of all its penances. Even excommunication was intended to cause repentance. The offender was cut off because he could not, in a state of sin, derive benefit from the ordinances of the Church. Of course, the practice of the law differed much from its theory, but it is impossible to understand the law without appreciating its avowed objects.

connected, not merely because the one in time precedes the other, or as originating, in some sense, at one common source, but because through many generations, and in every portion of the Christian world, they often crossed and interlapped each other, consequently influencing as well as being influenced — moreover, supplying defects where the one kind of law, or the other, required such confirmation or assistance. We may remark, therefore, that the answer to the question, What is 'Civil Law?' is easily given. It is neither more, nor less, than that law which governed the citizens of old Rome,—having, however, but a narrowed influence, at first,—being confined to that city and its municipal dependents.

But, in that self-same city, it comprehended all those '*rights*' and all those 'duties,' terms that belong especially to the 'Civil Law,' of which, as citizens, the people owed to, and claimed from, each other, as individuals, as members of families, and as component members of the State itself. Or to use the words of a heathen Philosopher, that "out of many they may be made One—such unity, that is, in their possessing the same sentiments, and with the mutual sense of help which they give one to another." An idea which the Christian lays hold of, and with some reason, in speaking of the Church of Christ, because spreading throughout the world, where there is to be one people, coalescing through one common bond, protecting and helping each other, with one Head, even Christ Himself, instituting, sanctioning, and praying too, that the *Spirit of Unity may prevail!* This unity and universality of the Roman Law comes out more clearly in the case

A good example of the difference between Civil and Canon Laws is that of *prescription.* The Civil Law easily allowed the acquisition of things by prescription. Not so the Canon Law, "A right never dies;" so that no length of prescription gave any title, except in the hands of a person holding *bonâ fide*,—'*Possessor malæ fidei ullo tempore non præscribit.*'

Another example is Marriage Law. The Roman Law, at the time when it affected Canon Law, held that no ceremonial was requisite for marriage, and that divorce might be had on very easy terms. The Canon Law accepted the former principle (though strongly recommending marriage by the priest), but rejected the latter. The former agreed with the simple Law of Nature, while the latter was contrary to Christian principle.

of the *jus gentium*, or *jus naturale*, portions of which laws are *immutable*[e] and *universal;* insomuch that this 'lex naturalis' is independent of time and place, being the echo of the Voice of God! Only, unlike every other law, the 'lex naturalis' does not grow, nor develope, as for instance, the civil law may be said to have done.

Spread of the Civil Law.

And here, in this extension of the Roman Empire, the nation gave permanency to its conquests, by introducing the principles of its own Law. It has been said by a philosophical historian (Montesquieu) that a people is always jealous of interference with regard to its language. But Law, even more than language, has the power of binding communities together. The Romans, therefore, where they could venture, leaving the language untouched, superseded the Laws of the conquered which they found, and *made*, as far as they could, the introduction of their own laws *co-extensive with* the Empire itself! And, therefore, in the working of their 'Civil Law,' we have a more correct picture of the progress of Christianity itself than that which any other kind of national law offers. Unity there is on one side, and (notwithstanding all our lamentable divisions) Unity is one great object which *Christianity has still in view*[f]. And there is Universality also, because its progress, notwithstanding all the impediments, is gradual and sure! Here a village, and there a village, now it is a City, and now a people,—while, in the aggregate, success still marks its course. At one time rapidly, as though by a kind of miracle, at another, tardily, whilst generations upon generations of mankind live and pass away, ere the Law of the Gospel is received, or even the Cross of Jesus is set up!

[e] See Bowyer, 131—134, and his citations from Ulpian, Grotius, Domat, and other jurists. So Justinian, lib. ii. tit. 2, s. 11, says, "The laws of nature which all nations observe alike, being established by a *Divine Providence*, remain fixed and immutable."

[f] Else, why does the Apostle urge the principle so strongly, "That there is one Lord, one baptism," &c., upon the Christians at Ephesus? Also, upon the Corinthians, taking his illustration from the human body, where the closeness of the union is plain enough.

CHAPTER V.

THE CANON LAW.

"The Law was our schoolmaster to bring us unto Christ."
Ep. ad Galat., iii. 24.

WITHOUT prosecuting the preceding part of the subject further, it will be enough if, through this tracing of the Civil Law amongst the Romans, we can detect where some of the links are, which bind the civil and ecclesiastical law together. For the subject of the inquiry is not to trace the working of the secular system, except so far as it touches upon, or serves to illustrate, the main topics under consideration. It has been well remarked by a great and thoughtful writer[a], "Et hinc intelligitur, quâ ratione contingat, ut lex Canonica et Civilis interdum versantur circa eandem materiam, quia nimirùm materia per se temporalis est, et sub eâ ratione potest lex civilis ad legem canonicam pertinere. Atque hoc modo delicta dicuntur esse mixti fori, quia ad utramque potestatem pertinere possunt, et in eis datur locus proventioni."

Canon Law may be divided like the Civil Law.

Now the history of the Civil Law has been divided into three distinct periods of time, viz. the "old," the "mediæval," and "modern." Suppose we adopt the like method in handling matters connected with the sister-branch of ecclesiastical law. At all events, it will serve our purpose as well as any other division that might be sug-

[a] Suarez, l. iv. de Leg. positiv. Canon., c. xi. 11.

So again, he says, l. iv. 14:—

"Secundo observandum est, leges civiles interdum admitti, non solùm in eandem materiam, sed etiam in usu fori Ecclesiastici: quando autem hoc contingit, non fit ex vi jurisdictionis civilis, nam leges civiles non possunt ad hoc obligare, ut per se constat: sed fit ex voluntario usu potestatis ecclesiasticæ, quæ ubi desunt canonicæ leges, civiles sibi utiles admittit, et illis utitur."

gested, with this advantage, in aid of memory, to the inquirer, that the number may, occasionally, repeat itself.

Primitive Law of the Church.

It has been said, that Ecclesiastical Law takes a real and substantial shape [b] at a very early period of the Christian era. Not that there was no Law before. For that law of some kind must exist, whenever and wherever a human society is found in its various stages of development, is a principle which must be admitted.

But, independently of this, it is evident, amongst the earliest disciples, Law did exist, and therefore, we may assume it as a fact, that the practical working of the Law became oral and *traditional*, and so was handed on from one Church to another, as Christians individually began to profess the Faith, gathering themselves into a compact body. And if there was but little written law, there was, no doubt, unwritten law in the shape of *custom*, a principle also already alluded to. This, it may be assumed, not only existed, but was *very familiar* to them, because it was prevalent in the religious communities from which they had emerged. It was a principle, moreover, well known amongst the Gentiles; so that, both with Jew and Roman, the notion of 'custom' had taken deep root [c].

[b] See below, where the point is referred to.

[c] "Omne jus aut consensus fecit, aut necessitas constituit, aut firmavit consuetudo."—*Modestinus*, l. xl., Dig. de Leg.

And as the authority of custom was based upon consent, the foundation of all law, apart from actual necessity, would, upon the Roman principle, be consent.

But as a kind of corrective, if I may use the expression, St. Augustine observes, who had well studied the Roman Law, "Rei non bonæ consuetudo pessima est." "Nemo consuetudinem rationi et veritati præponat," lib. iii., de baptismo, cited in the Canon Law as qualifying the aforesaid.

This custom, however, was presumed to be based upon reason and experience; the very argument assigned for not changing a custom without sufficient cause implied that there might be such cause: "In rebus novis constituendis evidens esse utilitas debet, ut recedatur ab eo jure quod diu æquum visum est." (*Ulpian*, lib. ii. dig. de constit. princ.) Hence the school-boy is not far wrong, as interpreting Roman ideas, when he comes to the common phrase that such or such a man was 'rerum novarum studiosus,' if he construes the same as 'a revolutionist.'

It was also familiar to the Greeks, who formed such an important element in the Early Roman Church, and indeed was thoroughly ingrained in the whole Aryan race. In short, and by way of example, Aristotle (whom we shall have occasion to refer to again in the course of these remarks) defines the whole range of law under two heads, the "written," and this time instead of "unwritten," as an equivalent expression, he uses the law of "*custom.*"

St. Paul's Canons.

And what I am stating concerning Christians generally, at this early period of their history, can be traced as easily to Apostolic times. Three times over does St. Paul make use of the word *κάνων*, or rule, in his writings that have come down to us. True, the word is not always used by him in the same sense; nevertheless, the term is used to express the idea he wanted on each occasion, and implying, too, that law, if not always the uppermost idea, was a thought very familiar to his mind.

Furthermore, it is evident that the notion was not simply the outcome of this particular Apostle's mind. St. Paul did no more than express what was already accepted by the Christians as a body, as appears in the First Council at Jerusalem (elsewhere referred to on another point), where the same acknowledged principle is laid down, that *certain observances were required*, and which may be classified under a threefold division,—a duty which not only commended itself to them in Council assembled, but to the Holy Ghost, whose mind they were expounding, upon this important occasion. The classification being: I. That the days of the Synagogue, i.e. the preceding Dispensation, were numbered. II. And however great the revolution, for a revolution it was, in the dealings of God's providence, they had still to feel that *certain great principles*, which *once they* held, they *must still* feel, as though by the force of Divine Law. III. To ward off all danger, lest the Church, in resigning Judaism, should fall back into any species of idolatry.

All of which was neither more nor less than what our Blessed Lord Himself had laid down, in spirit at least, in His previous teaching. "Think not that I am come to destroy the Law, but to fulfil it." Moreover, "One jot or one tittle shall in no wise pass, *till all be fulfilled.*"

So that when St. Paul spake so authoritatively to the converts, it was not simply in his own name, or even that of those who had preceded him in proclaiming the Faith, but by virtue of their Divine Master, and this in two ways, — that besides the Jewish Scriptures, there were many other things *orally* delivered [d], which they were to remember, and keep to, as of themselves possessing an authority. At least, if not so, another tone of expression would naturally have been used, when he says, "Wherefore, brethren," after describing the high dignity of their Christian calling, "stand fast, and hold,"—almost military terms,—"stand fast," said he, "and *hold the traditions* which ye have been taught, whether by word, or our Epistle." There being two ways, as though with divine and human law combined, by which the communication had been made to them.

Formulation of Canon Law in the Second Century.

To revert, for a moment, to what precedes, it may be asserted, that it was in the second century [e], as is generally accepted, when the Canon Law became a reality. This is, in a sense, true; for Canon Law then took a more developed form, and the Councils, to which we owe so many of its provisions, became an obviously important part in the corporate existence of the Church.

[d] "Apostoli enim Episcopis, ac Presbyteris a se ordinatis non modò haud pauca fidei dogmata tradiderunt, quæ scriptis non consignaverant; verùm et nonnullas præceptiones curam animarum, ecclesiæque politiam, spectantes docuerunt, quæ longo tempore hominum memoriâ conservatæ sunt. Unde in controversiâ de paschate utraque pars traditionibus apostolicis, altera Petri et Pauli, altera Joannis et Philippi, ad sententiam adstruendam suam, utebantur."—*Selvagg.*, vol. i. c. 6.

[e] "Plura in constitutionibus statuta leguntur, quæ nonnisi solâ traditione, primis sæculis in Ecclesiâ servata apertè testantur."—*Tertull. de Præscript.* c. 20; et *S. Basil. lib. de Spir. Sanct.*, cap. 27.

Gibbon's neglect of the Early History of the Church.

And it must not be supposed, that the Canon Law did not exist in a very early period of the Church's history, merely because a great historian of our own (Gibbon) chooses to say little[f], or nothing, about it till he approaches, in his History, a great epoch in its life, at the period of the Nicene Council (A.D. 325). Before, Gibbon speaks almost upon every subject, and largely as concerns the social, civil, and philosophical condition of a people, but not of Christianity in the abstract, or in its ramified details, spreading themselves like a tree, which has struck its roots here and there deeply, throughout the Roman Empire. And it is in such words as these that the introduction of the narrative meets us, and then it is only to tell us something about the Churches of Greece and Asia, speaking too in general terms, without tracing them backward to their first beginnings, in the great centres of *Jerusalem* and *Rome*[g]. That 'something' is, that "these Churches of Greece and Asia adopted the useful institutions of 'provincial' Synods, and that they may be justly supposed to have borrowed the model of a representative Council from the celebrated examples of their own country, the Amphictyons, the Achæan league, or the assemblies of the Ionian cities."

But then, antecedently to this, had not the Church

[f] "Decline and Fall," vol. ii. p. 119, ch. xv.

"It is very remarkable that it should not have occurred to a man of Gibbon's sagacity to inquire what account the Christians themselves gave of the matter. Would it not have been worth while for him to have let conjecture alone, and to have looked for facts instead? Why did he not try the hypothesis of faith, hope, and charity? Did he never hear of love towards God, and faith in Christ? Did he not recollect the many words of Apostles, Bishops, Apologists, Martyrs, all forming one testimony? No: such thoughts are close upon him, and close upon the truth; but he cannot sympathise with them, he cannot believe in them, he cannot even enter into them, *because* he needs the due preparation of mind."—*Grammar of Assent*, ch. x. 2, p. 456.

[g] Tertullian, about the beginning, or so, of the third century, speaks thus:—

"Percurre Ecclesias Apostolicas . . . Proxima est tibi Achaia? habes Corinthum; si non longè es a Macedoniâ, habes Philippos, habes Thessalonicenses. Si potes in Asiam tendere, habes Ephesum. Si autem Italiæ adjaces, Romam, unde nobis quoque auctoritas præstò est."—*De Præscript. hæretic.*, c. xxxiv.

already become an important factor in the world? and amid the towns, and villages, and across the sea, had she not been rapidly progressing[h]? Had her members never met before in solemn assembly[i]? I do not say in 'General' Council (for that word must be reserved for the period of her history to which Gibbon is alluding), but in those lesser collective meetings of the people, which brought them together to consult for the common good, and to pass such laws and regulations as might subserve the common purposes of the brotherhood. But, unhesitatingly, proceeds our Historian to declare: "It was soon established as a custom and as a law, that the Bishops of the independent Churches should meet in the capital of the province at the stated periods of spring and autumn. Their deliberations were assisted by the advice of a few distinguished Presbyters, and *moderated* by the presence of a listening multitude[k]."

[h] "Egressi Hierosolymâ legati Christi magnam terrarum orbis partem peragrabant, et numerosas Deo societates, exiguo temporis spatio, variis in gentibus, colligebant. *Cœtuum* ab illis conditorum non mediocris numerus in ipsis sacris libris, Actis in primis Apostolorum, indicatur. Præter hos quin multos etiam alios cum ipsi coëgerint, tum cogi a discipulis suis curaverint, omni caret controversiâ."—*Mosheim, Hist. Eccles. Extern.*, c. iv. p. 30.

[i] Here it may be added, that the words 'conventus' and 'cœtus' (not concilium), used of the assemblies of the Church prior to the establishment of 'Councils,' are subsequently used in a more enlarged sense, indiscriminately, for the more correct term 'Concilium,' i.e., when the latter is applicable, e.g.—

"Præsidebat unicuique cœtui unus Antistes seu Episcopus, communibus populi totius suffragiis creatus."—*Mosh.*, sæc. ii. cap ii. p. 81.

On the other hand, using 'conventus' in its more restricted and correct signification, the same author says:—

"Dicunt vulgò conventum Ecclesiæ Hierosolymitanæ, cujus historia Acts xv. primum Christianum concilium, sed abutuntur nomine 'Concilium,' qui sic loquuntur. Ille enim conventus unius tantùm Ecclesiæ concio est: quales si 'concilia' dici debent, innumerabilia primis temporibus concilia habita sunt."

[k] Hard things have sometimes been said of Clerical assemblages, but I know of none more graphic than the following remarks upon the 'House of Commons,' expressed as lately as May, 1883, by one of its own members:—

"The House of Commons was called boisterous, unmanly, and frivolous. But so it was called in the time of Burke and Fox; and it had been called so, nearer to our own time, by Macaulay, Peel, Cobden, and others."—Mr. J. Morley, M.P. for Newcastle-on-Tyne; *Times*, May 18, 1883.

Gibbon on the presence of the laity.

Why, or wherefore, this last clause of the sentence is added, it would be difficult to say, unless Gibbon thinks, that a Clerical body must, *ex necesse*, deliberate without calmness and order —an evil from which every lay assembly is as necessarily free? If the historian had been spared a few years longer to take a fresh survey of European Legislatures, probably his opinion upon the point would have been rudely shaken; and further, he might possibly have suggested, as a counter-check, the presence of a listening Clergy in the British House of Commons, to 'moderate' the proceedings there!

Ecclesiastical Assemblies called Cœtus and Concilia.

In speaking of these Ecclesiastical assemblages we have used two terms, viz. 'Cœtus' and 'Concilium;' and the conclusion would seem to be, that 'Concilium' was the development of 'Cœtus.' The 'Concilium,' moreover, had this special mark, that the Decrees passed therein were styled '*Canons*,' "which regulated," says Gibbon, "every important controversy of faith and discipline." Indeed, says another, who is supposed to write moderately and carefully upon the subject, "These Councils changed almost the entire form of the Church[l]." One great issue was, that "a regular correspondence was established between the provincial Councils, which mutually communicated and approved their respective proceedings, insomuch that," continues Gibbon, in still stronger language, "the Catholic Church soon assumed the form, and acquired the strength, of a *great federative republic*[m]."

[l] "Hæc Concilia .... totam ferè formam Ecclesiæ mutabant: Græco vocabulo 'Synodi,' Latino 'Concilia' dicebantur: leges verò in illis latæ 'Canones,' i.e. 'Regulæ' vocabantur."—*Mosheim*, p. 82.

[m] Curiously enough, St. Augustine makes use of the same expression,—"Per populum Romanum placuit Deo terrarum orbem debellare, et in unam societatem *reipublicæ*, legumque per ductum longè latèque pacare."—Lib. xviii., *De Civit. Dei*, c. 22.

St. Augustine was a prelate of the African Church, and a perfectly impartial judge of the merits of the Roman Law; and that opinion which he had of it would, no doubt, be followed by other prelates of the Church, in this or any other country.

This may, certainly, be styled very strong language, whether we accept the statement in its entirety, or not, in order to describe the extensive and *popular* comprehensiveness of the Church. The admission, however, is made the more remarkable after the long previous silence of the Author, as I have already said, upon the subject *of Christianity itself*, which is more important than the members forming themselves into a kind of federative republic.

Democratic Element in the Church due to Greek influence.

And yet, why should Gibbon speak otherwise? What people so likely to give form to an Institution which would become so influential in the Church, as the Greek-speaking body of Christians referred to? Meetings of the masses of a nation, on an extended scale, never formed a part of the policy of the Jews, if we except the occasions of the great *religious* festivals at Jerusalem. "Thither the tribes went up, even the tribes of the Lord, to *testify unto* Israel, to *give thanks* unto *the Name* of the Lord[n]."

Mosheim speaks very much to the same purpose :—

"Concilium congregatio est legatorum multarum Ecclesiarum *fœdere quodam* inter se *junctarum*."

[n] I cannot forbear quoting here some excellent remarks of another philosophical historian of our own, viz. Sir J. Mackintosh, showing that whatever influence these Councils had upon the Church, or whatever help they had from the co-operation and patronage of the State, they did more than repay all the advantages they received *by the benefits which they conferred upon society in general*:—

"The only institution of the civilized Roman which was transmitted into the homes of the barbarians was *the Christian Church*. The Bishops succeeded to much of the local power of the Roman magistrates; the inferior clergy became the teachers of the conquerors, and were the only men of knowledge diffused throughout Europe; the Episcopal authority afforded a model of legal power and regular jurisdiction, which must have seemed a prodigy of wisdom to the disorderly victors. The Synods and Councils, formed by the clergy, afforded the *first pattern of election and representative assemblies*, which were adopted by the independent genius of the Germanic race." And indirectly have we not as a people been partakers of the benefit? "The Ecclesiastics alone had any acquaintance with business; they alone could conduct the simplest affairs with regularity and quiet" (this is rather different from Gibbon's account); "they were the sole interpreters and ministers of whatever laws were suffered to act or felt to exist." . . . . "All the other institutions of the Empire were worn out. Christianity, however

Still less, under the Pagan system, was it the policy of the central city of Rome, where, if the public authorities ever had any sense of fear, it was when the people met in numbers, for the purpose of deliberation.

But the opposite line of policy was familiar enough to the Greek mind[o], because the Greek could, and did, surround the same with the *Majesty of Law.* The very term (*κάνων*) cannot but lead us to the same conclusion. It is a word of precision and logical accuracy, implying a *principle* amid the vicissitudes of the fortunes of the Church. It has lived to the present day, and will continue to live on, if we do not forget its signification, and so gradually ignore its very existence!

Universal Brotherhood of Christians a cause of General Assemblies.

Only we must add, however correct the statement may be, we ought not to attribute too much to this cause, as if there were no other circumstances at work, and gradually contributing to the same end. The spirit of Christianity, happily, is not isolation, but, to repeat the words, *Universality* in its Unity.

Such was its first character given to the Apostles by our Lord Himself[p]. The policy, therefore, adopted by His immediate disciples, was that of going from place to place, publishing the Divine Message. And almost from the beginning, they were taught, when sent out by Him to preach the Gospel, '*Two and Two*,' to feel their mutual

altered in its doctrines, was still a youthful and vigorous establishment, and the power which it speedily exercised in blending the two races, by gradually softening the ferocious courage of the Germans, so as to make it capable of union with the reviving spirit of the Roman provincials, afforded an early instance of its efficacy in promoting civilization."—*Mackintosh*, *Hist. of Engl.*, vol. i. p. 43.

[o] "Nullum etiam hâc primâ ætate vestigium apparet consociationis illius Ecclesiarum in unâ eâdemque provinciâ sitarum, quæ Concilia et Metropolitanos peperit. Constat potiùs, secundo demùm sæculo, morem Concilia habendi in Græciâ primùm ortum, et hinc ad alias Provincias propagatum esse."—*Mosh. Eccles. Hist.*, sæc. i. pars ii. p. 48.

[p] It is not only evident from Scripture, but the early Christians received the same as a fact: "Sed in primis hoc propono," says Tertullian, "Unum utique et certum aliquid institutum esse a Christo, quod credere omnimodo debeant nationes, et idcircò quærere, ut possint, cum invenerint, credere."—*De Præscript. hæretic.*, cap. ix.

dependence; so that, however important each member might be in the common work, they learnt, individually, they were only parts of *One Great Whole*, in the Society of the Christian Body.

It appears, subsequently, that they met together for consultation [q]. Whether rich or poor, therefore, they failed not to recognise the duty of contributing to the necessities of those who should be in need; and although mountain and sea should separate brother from brother, Christian sympathy could be appealed to, and was not appealed to in vain. Josephus, the Jewish historian, tells us with approval, that, under certain circumstances, the Jews, at a distance, had sent up their help to their fellow-countrymen in Jerusalem.

But St. Paul tells us far more than that, when the Gentile-Christians did the very same thing for the benefit of the persecuted and excommunicated Jews. It was not merely, as the narrative of the circumstance assures us, that Galatia, and Achaia, and Corinth, were engaged in the act of collecting alms for the distant brethren, but the issue was [r], that, in the accomplishment of the object, the far-off members were brought into *more immediate contact with each other*. Besides, the custom of transmitting "commendatory" letters [s] with Christians on their travels from one place to another—and which custom can be traced backward to Apostolic times—must have been an instrument for bringing the scattered members of the Faith, at least mentally, in closer communion with

[q] "Omnes primorum temporum Ecclesiæ sui erant juris. . . . Ut enim illis, quas ipsi condiderant Apostoli, Ecclesiis in dubiis et incertis rebus honor sæpè haberetur, ut *consulerentur*, nulla tamen his auctoritas judicialis, nullum imperium, nulla leges ferendi potestas erat. Omnes contrà, quod ipsâ luce clarius est, Christianæ familiæ æquo erant jure ac prorsùs inter se pares."—*Mosheim's Eccl. Hist.*, sæc. 1, pars ii. p. 48.

[r] Robertson's Lectures on 1 Ep. ad. Corinth., cap. xvi.

[s] Tertullian refers to this fact in the following terms:—

"Percurre Ecclesias Apostolicas, apud quas ipsæ adhuc cathedræ Apostolorum suis locis præsident, apud quas ipsæ authenticæ litteræ eorum recitantur, sonantes vocem, et repræsentates faciem, uniuscujusque."—*De Præscript. hæretic.*, cap. xxxvi.

their distant brethren, doubtless paving the way for the introduction of a more enlarged practical Union which would follow.

The Canon Law resulting from a combination of Roman, Greek, and Hebrew influences.

So that in the accumulation of facts, we may fairly infer, that the tendency of things was in the direction which 'Canon Law' found existing, when itself, gradually developing, took shape, and fashioned the various instruments to its own use, whilst invigorating the action of the Church.

And further, if the Gentile Greeks[t] had not been the means, as an initiatory cause, of calling "Canon Law" into existence, the Roman Christians[u] would, undoubtedly, have done so; since the old Romans, as a people, were among the greatest Legalists of the world. So that the probability is, that not only at an early period[x] of the Christian Church, but subsequently[y], if necessary, they would have drawn afresh their inspirations of Law from the very sources to which they had resorted many cen-

[t] "Jam verò ambigendum non est, ejusmodi Canones, licet Apostolis falsò tributos, ab apostolicis tamen catholicisque episcopis in Synodis per tria priora sæcula habitis fuisse conditos. Profectò disciplinam tunc temporis in Ecclesias præsertim *orientalibus* obtinentem exhibent; id quod ex toto canonum corpore manifestò evincitur."—*Selvagg. Diatr. Isagog.*, pars 1, vol. i. c. 7.

[u] "Inter Romanos (Sæc. 1) omnis generis doctrina et litteræ hâc ætate florebant. Ingenui pueri, a primis statìm annis, Græcis præsertim litteris et eloquentiæ, deinde philosophiæ et *juris civilis* præceptis, operam dare jubebantur, postremò Græciam majoris cultus ingenii capessendi causâ petere solebant."—*Mosheim. Hist. Eccles. Int.*, p. 42.

[x] And further, to show the bond of union which subsequently prevailed throughout the Greek world, produced by synodical action, we may quote the following: "Constat igitur, Græcam Ecclesiam medio sæculo v. codicem habuisse canones synodorum orientalium complectentem perpetuâ serie digestos, tamquam si unius essent concilia."—*Selvagg.*, ibid., p. 17, vol. i.

[y] "Ecclesia Romana, ad Nicænum usque concilium, moribus potius et consuetudine, quàm constitutis canonibus usa est. Veteres namque Romani pontifices avita instituta quàm diligentissime custodienda curârunt."—*Ibid.*, p. 19.

In thus speaking of the Greek and Roman Churches in respect to synodical action, it may be interesting to add the following in connection with the Gallican Church, the same also which, in olden times, kept up a strong connection with ourselves. "Tum vel maximè exeo, quòd Episcopi Gallicani, in judiciis Ecclesiasticis, auctoritatem æquè sedis apostolicæ, ac *orientalium canonum* urgere consueverint."—*Ibid.*, p. 23.

turies before, and to which, in the education of their children in the study of Law, they long continued to resort. Undeterred by the distance, their sons went to Greece very early in life for the acquisition of the special knowledge which their parents valued for them. The historical authority tells us, they went even as "ingenuous boys."

And yet, with that force of character which belonged to them as a people, they would, as persistently, have clung to the many peculiarities which marked their own Legal System!

NOTE I.—The Canon Law in its widest sense consists of Holy Scripture, the customary laws and usages of the Church, and of Constitutions comprising the Decrees and Decretals of the Popes, the Canons of Councils, and, to a limited extent, the writings of the Fathers. Indeed it sometimes includes Civil Laws, which by a kind of adoption have been grafted into it.

The following brief account of the Canon Law is given in Blackstone [z], and it will be seen that he understands the term in a much more restricted sense than that stated above:—

"The canon law is a body of Roman ecclesiastical law, relative to such matters as that church either has, or pretends to have, the proper jurisdiction over. This is compiled from the opinions of the antient Latin fathers, the decrees of general councils, and the decretal epistles and bulls of the holy See; all which lay in the same disorder and confusion as the Roman civil law, till about the year 1151, one Gratian, an Italian monk, in imitation of Justinian's Pandects, reduced the ecclesiastical constitutions also into some method, in three books, which he entitled *Concordia Discordantium Canonum*, but which are generally known by the name of *Decretum Gratiani*. These reached as low as the time of Pope Alexander the third (A.D. 1159). The subsequent papal decrees, to the pontificate of Gregory the ninth, were published in much the same method, under the auspices of that

[z] *Stephens' Commentaries*, 8th edit., 1880, p. 42.

Pope, about the year 1230, in five books, entitled *Decretalia Gregorii Noni.* A sixth book was added by Boniface the eighth, about the year 1298, which is called *Sextus Decretalium.* The Clementine constitutions, or decrees of Clement the fifth, were in like manner authenticated in 1317 by his successor, John the twenty-second, who also published twenty constitutions of his own, called the *Extravagantes Joannis*, all which in some measure answer to the 'novels' of the civil law. To these have been since added some decrees of later popes, in five books, called *Extravagantes Communes;* and all these together, Gratian's Decree, Gregory's Decretals, the Sixth Decretal, the Clementine Constitutions, and the Extravagants of John and his successors, form the *Corpus Juris Canonici*, or body of the Roman canon law.

"Besides these pontifical collections, which, during the times of popery, were received as authentic in this island as well as in other parts of Christendom, there is also a kind of national canon law, composed of *legatine* and *provincial* constitutions, and adapted only to the exigencies of our own Church and kingdom."

It is not our intention in our present volume to discuss the details of the Canon Law, so we may conclude Blackstone's description by reminding our readers that useful and important as the Decretum is, "the compilation as a whole never had the force of law in the Church." "Thus the texts of Scripture and decrees of Popes and Councils contained in the decree have that authority to which they are entitled, while the spurious decretals and canons and erroneous extracts derive none from their insertion in Gratian's work [a]."

The Decretals are superior in authority to the Decree [b].

The Sext, the Clementines, and both the books of the Extravagantes, have the same authority as the Decretals [c].

In the above extract from Blackstone, mention is made

[a] Bowyer, pp. 158, 159. Compare Engel, pp. 3—5, and Reiffenstuel, *Proœm.*, § v.

[b] Reiffenst. (*Proœm.*, § vi. No. 87) speaks of them as binding laws. Sir G. Bowyer (p. 164) calls them the statute law of the Catholic Church, but we cannot give them such a title.

[c] Reiffenst., § vi. No. 87.

of our National Canon Law, and it may be convenient very briefly to state of what it consists :—

"The whole of the foreign canon law has never been received in this realm, but a considerable portion of it has been accepted. Beside the foreign canon law we have our own legatine and provincial constitutions. The legatine constitutions were made and published within this realm in the times of the legates Otho and Othobon.

"The provincial constitutions were made in convocation in the times of the Archbishops of Canterbury, from Stephen Langton to Henry Chicheley: containing the constitutions of those two archbishops, and of several intermediate archbishops, viz., Richard Whethershed, Edmund of Abingdon, Boniface, John Peccham, Robert Winchelsey, Walter Reynold, Simon Mepham, John Stratford, Simon Islepe, Simon Langham, Simon of Sudbury, and Thomas Arundel. These were collected by Lyndwood, and their value increased by his learned exposition. Lyndwood was official of the Court of Canterbury, and afterwards Bishop of St. David's, in the reign of Henry the Fifth. And these constitutions, although made only for the province of Canterbury, were received also by the province of York in convocation in the year 1463.

"In the reign of Henry VIII. it was enacted that the canons and constitutions then in force should continue in force, so far as they were not contrary to the laws, customs, or statutes, of the realm, or the royal prerogative, until a revision should be made.

"A revision was attempted by the *Reformatio Legum*, but this work never received any legal sanction[d]. The canons of 1603 have a certain limited authority."

For further information with regard to Canon Law the English Reader may be referred to the able preface by Dr. Burn, and the preface to Ayliffe's Parergon; but especial attention should be given to the four last chapters of Sir George Bowyer's "Readings at the Middle Temple," which we have often cited. Should the student desire to extend his studies, he may peruse the Institutes of Lancelottus, which were drawn up to imitate those of

[d] This account is derived from Burn, Preface, p. xxx., and the judgment in Kemp *v.* Wickes, 3 Phill. Rep. 264.

Justinian. This work, though of great value, and found printed with the "Corpus Juris," has never received the force of Church law. The Institutes of Selvaggius we have quoted so often that we need not further mention them. Besides these writings, there is an excellent French book entitled "Droit Canon[e]" recently published. It is a translation from the German, and contains a much more modern view of the Canon Law, and especially of the relations of Church and State, than will be found in the older authors we have cited; and it deals with the History and political aspects of the Canon Law rather than with its details.

We hope to be able, in another volume, to discuss the amount of authority the foreign and national Canon Laws have in this realm, and to offer some suggestions as to the course of study which should be adopted by those who are anxious to understand what the Law of the Church of England really is, and what are the true relations between the laws of the Church and Realm.

[e] *Bibliothèque Theologique—'Droit Canon.'* Par le Dr. Fréd. H. Vering. Traduction de l'Abbé P. Bélet, Paris, 1879. Besides the value of the Book, it is a pleasure to quote what serves as a reminder of the connection which, in very early times, subsisted between England and France, through our common Christianity.

To this fact, possibly, in addition to our membership with the Teutonic portion of the European family, may be attributed *some* of that yearning for independence of foreign jurisdiction, which marks the course of events in English history. It is true that the influence, if any, was derived from France; and in the long run of events we outstripped our neighbours, the 'Reformation' becoming a great fact with us. Nevertheless, the Gallican Church still claims, what it always has claimed, the privilege of a greater independence than other Roman Catholic countries.

MODE OF CITATION OF CANON LAW.

NOTE II.—It is a great misfortune that the mode of citation of the Canon Law is extremely complicated. It may assist some of my readers if I give the short description of the contents of the *Corpus Juris Canonici*, and of the common mode of citation of its various parts, contained in Stephens' Ecclesiastical Statutes.

It is, however, always best in reading any work dealing largely with Canon Law, to see what mode of citation is employed. Lyndwood's will be found in page 11 of his *Prolegomena;* and Phillimore's at page lxv., and Burn's at page xxv., of their works.

(*Extract from Stephens' Statutes*, vol. i. pp. 558—569.)

"The Decretum is divided into three parts. The first contains 101 sections, called 'distinctiones,' and treats of the origin and different kinds of Law, and particularly of the sources of ecclesiastical Law, of persons in holy orders, and the hierarchy. The second treats of thirty-six particular cases (*causæ*,) out of which questions of Law (*quæstiones*) arise. The solution of these questions is given in the extracts. Caus. 33, quest. 3, of the second book, constitutes a special treatise concerning penance (De Pœnitentiâ), and is subdivided into seven distinctiones. The third book is entitled, 'De Consecratione,' and contains canons relating to the consecration of Churches, the Sacraments, and the celebration of Divine Service. It is divided into five distinctiones. It is remarkable, that the Dicta Gratiani are entirely wanting in the third part. Each separate extract is marked by the letter C, which stands for chapter (*caput*, *capitulum*), not, as it is ordinarily read, for Canon. In the early manuscripts and editions of the Decretum, the larger divisions are numbered, but not so the chapters: hence the latter were necessarily cited by initial words. The first part was thus anciently cited: I. d. lex, meaning the chapter beginning with the word lex, in the first distinction. This is now numbered c. 3, and the fuller modern mode of citing would be, 1 dist. c. 3, lex. The second part is thus cited: 3, qu. 9. caveant; or more fully, 3, qu. 9, c. 2, caveant; meaning cause the third, question the ninth, canon or chapter the second. The 33rd cause and third question is cited in a peculiar manner, thus: De pœnit. d. 2, radicata. The same passage might be otherwise referred to, thus: 33, qu. 3, dist. 2,

c. 2. The third part is cited like the first, with the addition of the words, 'De consecratione,' thus: De consec. d. 2. quia corpus. This means the 35th chapter or canon (which begins with the words 'Quia Corpus') of the second distinction of the treatise De Consecratione, which is the 3rd part of the Decretum Gratiani. As the Decretum long stood alone, it is understood to be cited when there is no distinctive mark to denote a reference to other portions of the 'Corpus Juris Canonici.' It is upon the same principle that distinctiones of the first part of the Decretum are denoted, simply, by the letter d, while to the distinctiones in the second and third parts are respectively prefixed the specific symbols, 'De pœnit.' and 'De consec.' We have seen, that there is usually no mark to denote *causa* [Causa, by the moderns, is often denoted by a capital C, the *small* c being still reserved to denote caput], and that a mere number followed by qu. was considered a sufficient reference to a causa of the second part of the 'Decretum.' Such is the explanation of a wretched technical system of citation, which seems designed to puzzle the uninitiated.

"The Decretals, we have seen, consist of three parts: Gregory's, the Sext, and the Clementines. Gregory's Decretals (which are sometimes exclusively designated when the Decretals simply are spoken of) are divided (like the collection of Bernardus Papiensis, which they superseded,) into five books, the contents of which are denoted by the verse

"Judex, Judicium, Clerus, Sponsalia, Crimen."

"Each Book is divided into titles with rubrics, and the titles are subdivided into chapters with inscriptiones. The Decretals of Gregory, having been the first collection that wandered beyond the Decretum, were originally denominated Extravagantes, and they are still denoted in citation by the word Extra, or the letter X, though the name of Extravagantes has been transferred to later compilations. Gregory's Decretals are usually cited by the Chapter and title, without any reference to the number of the books. The varieties in the modes of citation are similar to those which we have explained in treating of the references to the Pandects. Thus, c. Cum contingat, X. De offic. et pot. jud. del., is the 36th chapter beginning with 'Cum contingat' of the title in Gregory's Decretals, which is inscribed 'De officio' et potestate judicis delegati: and which, by consulting the index, we find to be the twenty-ninth title of the first book.

"The canonists seem to have been fond of the number five. The Sext, or sixth Book of the Decretals, is itself divided into five books of the second order. The Clementines also consist of five books, the fourth book consisting of only three or four lines. The subdivisions of the Sext and Clementines resemble those of the Decretals of Gregory. The mode of citation, too, is similar, and admits of similar varieties: only, instead of Extra, or X, there is subjoined, in Sexto, or in 6, in references to the Sext; and Clem. or in Clem. in references to the Clementines. Thus c. Si gratiose, 5, De rescript. in 6, is the 5th chapter beginning with Si gratiose of the title De Rescriptis, the Liber Sextus Decretalium,—the title with that rubric being the third of the first book. Again, Clem. 1, De sent. et R. J., or Ut calumniis, 1, De sent. et R. J. in Clem., is the first chapter of the Clementine Constitutions, under the title De sententiâ et re Judicatâ,—which chapter begins with Ut calumniis, and belongs to the eleventh title of the second book.

"The Extravagantes of John the Twenty-second, are contained in one book, divided into fourteen titles. They are cited thus: Extravag. ad conditorem, Joh. 22, de V. S. This means the chapter beginning with 'Ad conditorem' of the Extravagantes of John the Twenty-second, title, De verborum significatione, which is found to be the 14th title.

"The Extravagantes Communes, in imitation of Gregory's Decretals, are divided into five books, though the 4th book is a blank! 'Quartus Liber vacat!' The mode of citation may be thus exemplified, Extravag. Commun. c. Salvator de præbend. This means the Chapter beginning with 'Salvator,' in the title 'De præbendis,' among the 'Extravagantes Communes.' There is no constancy in the position of the references to the larger, or smaller, divisions. Sometimes the rubric of the title precedes, sometimes follows, the initial words of the chapter. We have given, with some additions and explanations, the examples of citation which are contained in a note to the first chapter of Halifax's Analysis of the 'Civil Law,' b. 1."

The above account, which we have taken from Stephens, is stated by that writer to have been borrowed from an Article by Professor J. T. Graves in the *Encyclopædia Metropolitana.*

CHAPTER VI.

THE CANONS AND COUNCILS OF THE CHURCH.

"Where no counsel is, the people fall: but in the multitude of counsellors there is safety."—*Prov.* xi. 14.

THE object of this Treatise is not to give a consecutive history of the events that led to the formation of Canon Law in the Church of Christ, or of the great Councils of the Church that from time to time expressed its authority by their decisions.

Different kinds of Canons.

This would open a wider field than what is proposed for survey. Still less is it needful to consider the consequences that ensued upon this, or that, decision which this, or that, Council came to, after solemn deliberation. At the same time, these Councils, at least many of them, occupied an important position according as we classify them under the head of 'local[a],' or 'provincial,' or 'œcumenical,' the last, of course, standing out, in the picture of events, not only because the most prominent, but having a world-wide importance as the name implies.

Now, according to this division, a 'Canon' may be 'universal,' or it may be 'provincial;' or again, it may be a 'local' Canon,—not, however, the self-same Canon, and at the same time, that is. But whilst one Canon possesses one of these features, another may possess another, according as the same may be received and settled. Nothing, however, prevents, if it so seems good, a Council of the requisite description, from making a particular Canon 'provincial,' or even 'œcumenical,' according to the power of the Council. And by the transfer, the Canon not only assumes the new name, but is clothed with an additional ecclesiastical authority.

[a] See note at the end of this chapter.

The main principles of the Church unalterable.

Of course, there are some things belonging to the Church which can never be altered, or modified, or transferred into any fresh position, but must remain as they have been delivered, unexposed to change at the hands of any Ecclesiastical or other authority.

An Apostle speaks of such things as have been "*delivered*," and "*once for all*" — belonging alike, therefore, to every Christian, who again, *per se*, cannot alter or modify, according to the pre-conceived notions of his own mind. And in answer to an objector, he who asks for a reason for everything he believes, is said "of all others to be the most unreasonable" (*rationis expers*). In short, whatever else may be subject unto change of time or person, these things are not. They must remain the same, 'like a rock' (to quote the words of Tertullian), "immoveable," and "not to be formed again." "Whatever the Church holds," says St. Augustine, "not having been instituted by any Councils, but which have been retained always, the same is most rightly believed, as having been instituted by no other than Apostolical Authority."

This is, really, not stating more than what was, in fact, laid down as a Canon at the Council of Nicæa, A.D. 325. For instance, in allusion to those who desired 'the Communion' at the point of death, it is declared, "*Περὶ δὲ τῶν ἐξοδευόντων, ὁ παλαιὸς καὶ κανονικὸς νόμος φυλαχθήσεται καὶ νῦν*," κ.τ.λ.—in other words, 'the old and canonical law shall be observed,'—so 'old,' that is, as to be considered *ancient* at the Council of Nicæa, which is worthy of notice, with reference to previous canonical history. And, indeed, this is scarcely more than what has been advanced of 'Civil Law' itself, viz., that for 'Laws of Nature' there are certain principles laid down as 'Universal' and 'fundamental' ("generalia" et "architectonica,") viz., "to live honestly," "to give every one his due," "to hurt no one," and to which three things there is added "Let all law to these, as to a definite goal, be directed." And the two kinds of law are put together; "for law-learning" (*juris prudentia*), repeats Hunter, in his

"Institutes to Roman Law," "is the knowledge of things divine and human, of the just and the unjust."

Scripture the Foundation of the Canon Law.

With these preliminary remarks, we can advance one step further in the investigation, having the foundation of the Canon Law based upon the Institutions of Christ and His Apostles; so that as the Church itself claims a Divine origin, it follows, that what was laid down at the beginning for the guidance and government of the Church must, in its degree, partake of the same Divine character.

If this be so, then, of course, we can speak more definitely, and still more decidedly, upon this Law, because its subject-matter is of a higher and holier type than any other Law. "The substance of the service of God," says Hooker, "so far as it possesseth aught more than the law of Reason doth teach, may not be invented of men[b], as it is among the heathen: "Wherefore," cries the prophet, "the Lord said, Forasmuch as this people draw near Me with their mouth, and with their lips do honour Me, but have removed their heart far from Me, and *their fear toward Me is taught by the precept of men*," but must be received from God Himself, as it always hath been in the Church, save only when the Church hath been forgetful of her duty. "Therefore," continues the Prophet, as the appointed Messenger of God, "I will proceed to do a marvellous work among this people, even a marvellous work and a wonder."

And we may state further, that however close the connection may be between Canon and Civil Law—and the union will come again under consideration—the Law of the Church moves in a groove of its own—a principle, the vitality of which is not interfered with, when the two are brought into closer contact with each other.

And as we have alleged, such has been the action of the Church from the beginning, since before the Law had become more enlarged, or generalized, in its application, the Churches, no doubt, respectively passed their own Rules (not Canons as yet), the Civil Governor inter-

[b] Isaiah xxix. 14. ". . . For the wisdom of their wise men shall perish, and the understanding of their prudent men shall be hid."

posing no hindrances, whether as simply acquiescing because the matter was not thought worthy of account, or else not caring to know what a mere Christian assemblage of the people meant.

The Primitive Canon Law.

In the first three centuries of the Christian era we have, however, but scanty information handed down to us, touching the subject of our inquiry, beyond some letters of the Bishops of Rome, and of a small number of other Bishops, of whom, as one of the most remarkable, is St. Cyprian, from whom we have the proceedings of two assemblies, held at Carthage, A.D. 256.

The "Apostolic" Constitutions and Canons.

But before we enter more minutely into some matters connected with the foregoing, we have certain writings that demand attention, and which may be classified, more easily as to matter than date. They consist of two parts: the 'Apostolical Constitutions' and the 'Apostolical Canons.' Both are apocryphal, though, probably, the latter has less authority than the former. The "Apostolical Constitutions" consist of eight books, of which the six first were in the form of a collective letter (so called) of the Apostles: the subject-matter being "the Constitution and discipline of the Church." They were edited in Syria; and, towards the close of the third century, had a large circulation in the East. There were added, subsequently, two books, composed, probably, towards the beginning of the fourth century, and were, at first, independent of one another.

The first of these contained moral and liturgical directions. The second contained forms of public prayer and Holy Communion, and Constitutions on Ordination. We find the name of the martyr Hippolytus cited here. There are included, also, an account of the sacred functions of Bishops; and some matters of discipline were added under the name of the "Constitutions of the Apostles." Again, there were appended to the eighth book of the "Constitutions of the Apostles," in the guise of conclusions, eighty-five short maxims, bearing the name of the

"Canons of the Apostles," and which, probably, were composed in Syria, in the second half of the fifth century.

It is but right to observe, that whatever value we are disposed to attach, individually, to the above 'Constitutions' and 'Canons,' it is thought by some, not necessarily Ecclesiastics, that they give us a fair picture of the condition of things in the Church, prevailing in the second and other early centuries [c].

The Ante-Nicene Councils.

It seems, then, in connection with the above, and preceding the great Œcumenical Council at Nicæa, there are the decrees of several particular Councils (of which there is a long list) that might be noticed. But for want of space, we must confine ourselves to very few, such as those of Elvira (A.D. 305), and Arles (A.D. 314), and Ancyra (A.D. 314), and Neo-Cæsarea (A.D. 314—325), which followed the preceding, not forgetting, as probably more important, and anticipating all the afore-mentioned which have come down to us, those of St. Cyprian and the African Church. This learned and great Bishop contributed much towards planting the Cross throughout the northern parts of this vast Continent—once a bright home for the reception of the Faith, but now, alas! supplanted, and given up to the resolute antagonism of Mahomet. Only three particulars will be referred to in connection with this Church. But they are all important, and especially as emanating from a body of Christians, who, though forming an integral part of the Church Universal, nevertheless, with a spirit of independence, had their own laws, or Canons, for their spiritual guidance. The first is, perhaps, more curious than important. We have spoken elsewhere of the spread of the Roman Civil Law. So it found its way here, as well as elsewhere. The said law required one thing, to which, as Christian Churchmen, these Africans demurred. The Civil Law declared that when a man had been appointed an executor under a will, he could not refuse to act, and this applied both to priest and layman. But what did the Church, on the other hand, say? Or rather, what did the

[c] This appears to be the view taken by Bunsen.

Bishop say as her ecclesiastical representative, and the champion of law as well, i.e. when the principles of human law, as he conceived, interfered with the principles of Divine Law? The letter is worthy of being transcribed as the expression of a high sense of Christian duty.

EPIST. I.

"*Cyprian to the Presbyters, and Deacons, and Laity assembled* (*consistentes*) *at Furni, greeting.*

"We were greatly concerned, dearest brethren, I and my colleagues who were with me, and our fellow-presbyters who sat with us, at hearing that Geminius Victor, our brother, had, when leaving the world, by his last will, appointed Geminius Faustinus, a presbyter, to be his executor: whereas it was long since decreed in a council of Bishops, that no one should by his will appoint one of the Clergy and Ministers of God, to be executor or guardian, since every one honoured with the holy priesthood and ordained to the clerical office, ought only to serve at the altar and sacrifices, and give himself wholly to prayer and supplications. For it is written, 'No man that warreth for God entangleth himself with the affairs of this life: that he may please Him who hath chosen him to be a soldier' (2 Tim. ii. 4). Since then this is said of all, how much more ought they not to be tied down by secular affairs and entanglements, who, being occupied by holy and spiritual things, may not withdraw from the Church, and give up their time to earthly and secular business[d]. . . . That so the decree of the priesthood, made for holy and necessary ends, may be upheld by us."

Epistles of Saint Cyprian.

The following is added as a specimen of the earnest desire that prevailed in the African Church for Christian unity. A gift that has come to us none the more even *now*, after an interval of some sixteen centuries, so that it still forms a subject for Christian prayer!

EPIST. XXV.

"*Cyprian to his brother Caldonius, greeting.*

"They, who having been banished and deprived of all their property, have raised themselves up again, and begun to stand

[d] St. Cyprian imposed as a penalty, that the name of any one who offended against this constitution should, after his death, be omitted in the oblation.

with Christ." . . . . "These letters, already sent to very many of our colleagues, have been approved; and they have written in answer, that they will persevere in the same purpose with me, according to the Catholic faith. Which fact do you also transmit to as many of our colleagues and of yours as you can; that so one *rule of discipline* and *one consent* may be observed by us all, according to the Lord's commands."

Every reader of Church history is aware of the controversy that arose between the African and Roman sections of the Church. I take the following quotation to show the nature of the topic in dispute, and the mode in which the difficulties were attended to:—

EPIST. XLIII.

"Cyprian to the whole people, greeting.

". . . . but that the Priests of the Lord being abandoned, a new tradition of unholy institutions should rise up against ecclesiastical discipline; and although it has once been determined as well by us, as by the confessors and clergy of the city," (Rome), "as also by all the bishops established in our province or beyond seas, that nothing new be done in the cause of the lapsed, until we have all met together and by mutual advice have settled some sentence, tempered alike with discipline and *mercy*."

Once more, in reference to controversial matters with Rome:—

EPIST. LXXV.

"Firmilian to Cyprian, his brother in the Lord, greeting.

"They who are at Rome, do not in all respects observe the things handed down from the beginning, and that they in vain pretend the authority of the Apostles, any one may know even from this, that in celebrating Easter, and in many other divine and sacramental ordinances, we may also see that there are certain diversities among them, and that all things are not alike observed by them which are observed at Jerusalem. As in many other provinces also, there are many differences according to the diversity of places and men; nor yet has there on this occasion been any departure from the peace and unity of the Catholic Church." "This, Stephen (Bishop of Rome) dared

to make, breaking the peace with you; which his predecessors ever maintained with you in mutual affection and respect, &c."

Synod of Elvira (Spain, A.D. 305).

And of the many Councils that might be referred to, we may take Elvira or Illiberis first, because it is a Spanish Council, away, therefore, from the other great centres of Christian influence, and because amongst those who were present, and took part in the proceedings, on the occasion referred to, was Hosius, Bishop of Corduba, afterwards so famous in the Arian controversy, the friend and counsellor of Constantine. It seems that some eighty-one Canons, &c., were passed, treating upon a variety of subjects connected with Religion and Morals. These eighty-one may be considered authentic, although others have been appended to the list as mentioned in the "Corpus Juris Canonici." Amongst others worthy of note is the 21st, against those who neglected to frequent their places of worship, entitled, "De his qui tardiùs ad Ecclesias accedunt," an evil which had begun to be complained of even in those early days:—the same Canon, nearly, which Hosius proposed and carried at the previous Council of Sardica. It is the 11th of the Greek and the 14th of the Latin Text of the decrees of the latter Council. Canon 28 speaks of the necessity of "communicating," the wording of the Decree being, "Episcopos[e] placuit ab eo, qui non communicat, munus accipere non debere," remembering what the custom was, viz., that those who communicated brought up to the altar their offerings for presentation. "The Bishop," the Canon adds, "cannot accept at the altar the offerings (*oblata*) of those who do not communicate."

Canon 36. "Placuit picturas in Ecclesiâ esse non debere, ne quod colitur et adoratur, in parietibus depingatur."

Canon 43. "Pravam institutionem emendari placuit juxta auctoritatem Scripturarum, ut cuncti diem Pentecostes celebremus, ne si quis non fecerit, novam hæresim induxisse notètur."

[e] See Harduin, 153; also Waterland, vol. iv. p. 785, "Doctrine of the Eucharist." A Council, 19 Bishops, at Eliberis or Elvira, in Andalusia, a province of Spain.

The reason for this seems to have been that the custom had become prevalent in some parts of Spain of celebrating the 40th day after Easter, and not the 50th—consequently the day on which the Ascension of Christ was kept, not Pentecost.

It has been stated that there was a Montanist element in Spain, which would suppress the Feast of Pentecost altogether, the Montanists holding that the Holy Spirit did not descend till He came and dwelt in Montanus, who was regarded by them as "*the Comforter*."

Canon 49. This Canon is an important one as shewing the influence that the Jews had begun to acquire in Spain, and the feelings with which the Christians were taught to regard them. Probably, the Jews had found their way into the peninsula about a century before the Christian era; and, what was not very usual with them, they had begun to draw over some Christians to their belief.

"Admoneri placuit possessores, ut non patiantur fructus suos, quos a Deo percipiunt cum gratiarum actione, a Judæis benedici, ne nostram irritam et infirmam faciant benedictionem: si quis post interdictum facere usurpaverit, penitus ab Ecclesiâ abjiciatur."

The Council of Arles (Gaul, A.D. 314),

Like the preceding Council, was not held near any of the great centres of Christianity, as it existed then. Moreover, although held in Gaul, the Council is important in bringing the African Church into closer contact with Rome, through the Donatist controversy. The year before had witnessed the discussion of the question at a Synod held at Rome.

The discussion went on for three days, a kind of compromise being the issue[f]. The decision of the Synod was proclaimed by its President, the Bishop of Rome, and communicated to the Emperor. The compromise, however, did not extinguish the controversy. For some de-

[f] This and 'arbitration' were the two methods, as has been already observed, by which the Church tried, oftentimes, to settle controversial difficulties.

puties of the party of the Donatists were invited to this Council, which has been considered so important by some, that Canonists have called it a "plenarium Concilium occidentale," but not 'œcumenical.'

Besides examining into the affairs of the Donatists, the Council passed twenty-two Canons, having, first of all, because convinced that "it acted under the influence of the Holy Ghost," used the formula, "Placuit ergo, præsente Spiritu Sancto, et Angelis ejus." The Council begged the Pope (who had now the larger dioceses under his control) to promulgate its decrees universally. It seems the Synod sent two letters to the Pope, in the first of which the affairs of the Donatists were chiefly dwelt upon, together with the names of the Bishops present. The second included all the decrees that were passed. And what makes the Council the more interesting to ourselves, it appears that three Ecclesiastical Deputies from Britain were present, showing, first, the hold that Christianity possessed in our own country at that very early time; and further, that the connection that subsisted between the two branches of the Church was not without its effects, subsequently, upon one at least of these two. Two of the Bishops were Eborius of York and Restitutus, Bishop of London. The name of the third was Adelfius; only it does not quite appear what the See was which he held, the title of designation being "Episcopus de civitate colonia Londinensium," whatever that may mean. Of course, it may be alleged, very naturally, that the fact of three Bishops crossing the sea to a neighbouring country means little, since history mentions nothing beyond the bare fact.

British Bishops present.

But let us, for a moment, *contrast* this meagre, but important, statement with what took place many centuries afterwards, when the *Council of Constance* was held, A.D. 1423, and when matters came to be discussed how the Ecclesiastical world was to be divided. Then England[g] was not thought worthy of

Comparison with Council of Constance.

[g] "The French Ambassador contended before the Council of Constance, that Christendom was divided into four great nations of Europe, viz., Italy,

a place at all. Indeed, but for her own self-assertion at the time, she might have been thought by posterity (if not otherwise informed) to have been almost more non-existent than she was above 1,000 years before!

The Canons of the Council of Arles.

Now the subjects discussed at this Council of Arles, and upon which that Council finally decided, were such as began to agitate, and engage the attention of, the Church elsewhere; the two salient points being, as to the time of keeping Easter and the baptism of heretics; the latter question having been the cause of much trouble in Africa. Hence, then, at the Council of Arles, the first Canon passed was on the subject of Easter, that the festival should be kept at one and the same time throughout the Christian world, the wording of the decree being,—

"Ut uno die et tempore Pascha celebretur,"

a question which, to ourselves, might appear, comparatively, of minor importance, *provided* that the Festival was not forgotten as commemorative of the great event of the Resurrection of our Blessed Lord, i.e. as being the first step towards the accomplishment of His own ascending glory, and man's justification with God! We might wonder, whilst lamenting, how it was that such a subject *could be* made the cause of religious dissension, and the necessity for ecclesiastical legislation.

The dispute about keeping Easter.

But then we must recollect, that with these early Christians, there were other reasons at work which led to such differences of opinion, since many, though Christian in the fullest sense of the word, still retained some vestiges of the old Jewish prejudices, the law of Moses having left behind a feeling which some writers would trace backward even to Apostolic times. The result, therefore, was, that for the keep-

Germany, France, and Spain, and that all the lesser nations, amongst which they reckoned England, were comprehended under one, or other, of these. But *the English asserted their right, and the claim was allowed by the Council*, that the British Islands should be considered a fifth co-ordinate nation, entitled to an equal vote with the others."—Charles Butler, Esq., Lincoln's Inn, *Essays on Canon Law*, dedicated to Lord Chancellor Eldon, published 1807.

ing of the festival, the dissentients would rather lean to the precise time when the Jewish Passover was kept. And it is equally easy to perceive, that others, who having once renounced Judaism, were anxious to renounce it altogether, —who, in short, though in their worship and their laws they had almost unconsciously borrowed much, nevertheless, on so important a question as a *high Festival* of the Christian Church, would dissociate themselves entirely from the *olden* bondage!

Canon 2. "Ut ubi quisque ordinatur, ibi permaneat."

Canon as to "Translation."

Very similar to the foregoing is Canon 21 of the same Council,—

"Ut Presbyteri aut Diacones qui ad alia loca se transferunt, deponantur."

The former, probably, refers to the lower, the other, to the higher Officials of the Church. This Canon is mentioned for two reasons: i. from its similarity with the (so called) '*Apostolic Canons*,' already alluded to, inasmuch as the point in the above is asserted also in Nos. 13 and 14, or 14 and 15, of the latter; ii. the feeling expressed in this Canon of Arles arose, probably, from the 'jus perpetuum,' which was assigned to the office, in connection with the holding of a benefice. "Sicut enim clericus non ordinatur ad tempus; ita nec alicui Ecclesiæ ad tempus addicitur." A vestige of the old law still remains, in that no clergyman can (except in case of a Donative[h]) resign his spiritual Cure, without first receiving the permission of his Bishop.

What is here, however, laid down in the Canon about Presbyters and Deacons was also declared upon the subject of the translation of Bishops from one diocese to another, so that what is alleged in the 15th Canon of Nicæa appears as the 21st at Antioch, and again as the 1st and 11th at Sardis, as well as several other Councils. And for this, Constantine, the Emperor, commends Eusebius, Bishop of Cæsarea, because he kept what he calls the

[h] Donatives are not resignable to the Ordinary, but to the patron, who has power to admit.—*Phill. Eccl. Law*, 518, *Gibson*, 822.

'Ecclesiastical and Apostolical rule,' when he refused to accept the See of Antioch, to which he had been invited. As a reason for this decree, it is stated that such was intended as a check against any possible temptation of ambition, or avarice, or self-seeking of any kind; and that when once the spiritual supervision of a Cure, whether great or small, had been undertaken, the care for that should be the guiding principle of official life. . . . "Nullus enim Episcopus," says Innocent III. *de translatione*, "adhuc inveniri potuit, qui a majori civitate in minorem transferri studuerit; unde constat, eos habendi plura cupiditate succendi, et arrogantiæ servire, ut videantur majorem habere potestatem."

But without touching upon the other two reasons assigned, whether possible or otherwise, there was another current of feeling, which, in a steady course, pervaded the early Christian Church, as we shall find when referring to another important topic, viz., the spiritual relationship that subsisted between the Cure and him who had the supervision of it, and which was supposed, as a tie, to be scarcely less strong than marriage itself, where such was contracted. It became the Union of two, and an Union, moreover, which was considered so sacred that nothing but death could sever it. St. Jerome, in language which was familiar to him, in the warmth of his natural temperament, says, "Ne, virginis pauperculæ societate contemptâ, ditioris adulteræ quærat amplexus[1]."

Church property in primitive times.

This would seem to lead us to the consideration of the property of the Church, so far as the support of the clergy was concerned. During the first three ages of the Church, i.e. during the times when sore persecutions often prevailed, the property was necessarily of a moveable character, collected from the faithful, being such as could easily be conveyed from

[1] The whole passage runs thus :—

"Et hoc, inquit, in Nicænâ Synodo a patribus decretum, ne de aliâ in aliam Ecclesiam transferatur Episcopus, ne Virginis pauperculæ societate contemptâ, ditioris adulteræ quærat amplexus."—*St. Jerom. Ep.* 83, *ad Ocean.*, Selvagg. i. 286.

place to place, or concealed, or distributed, as was deemed needful—consisting, therefore, of corn, or oil, or garments for the poor, and money also, which might be of service for the purchase of food. Tertullian[k], at the end of his 'Apology,' adding his testimony to Justin Martyr in his 'Apology,' alludes to the mode in which the work was carried on before any regular endowments were established: "Modicam unusquisque stipem menstruâ die, vel cum velit, et si modo velit, et si modo possit, apponit: nam nemo compellitur, sed sponte confert." "Hæc quoque deposita pietatis sunt." Two points then are clear: firstly, that the collections were made at stated prescribed times; and secondly, that the offerings were of a free and spontaneous kind. No law, it seems, existed, as yet, except what the Christians prescribed for themselves in the imposition, or as confirmatory of these payments. Therefore, besides the fear of their property becoming a prey to any powerful invader, the Christians knew, in case of spoliation, that it would be useless to appeal to the secular authorities for redress.

The Decrees of Constantine as to Church property.

But this statement is made not without some modifications; for the Church property, at the period of time we are speaking of, was not always of this kind. It is clear that the custom was not unknown of a portion being of the *immoveable* class, though forming the exception, as of buildings, farms, gardens, and other things under the same category, which appears from a decree of Constantine, and mentioned by Eusebius, viz., that all things which of *right appeared originally to belong to the* Church, but which had been forcibly taken away in time of persecution, be it 'a house, or a field, or any other such like things,' we order to be restored. Moreover, when peace was brought about to the Empire, or at least to the Church, by the Emperor, the ecclesiastical revenues began to increase, mainly through the influence of that powerful Ruler; a proof of which was given, that when to those who had suffered martyrdom, or exile, or any other punishment which had carried with it

[k] *Tertullian's Apol.*, cap. 39.

the loss of worldly goods, *he decreed*, that the same should be restored, when possible, to the survivors, or if not to them, to those next akin to them; and again, these failing, then the Church was to have the advantage of the restoration. No doubt, the idea prevailed with the authorities, that as a principle of common honesty, the State had no right to claim, except in the way of stewardship, to see that this property went back in its rightful channel; and that next to these, the Church, a public institution for the benefit of all, was entitled as the recipient. And to such an extent did the principle prevail, that succeeding Emperors, e.g. Theodosius, the younger, and Valentinianus, legislated upon the subject, not only by confirming what Constantine had done, but extended the Law to the property of those ecclesiastics who died intestate.

The Offerings of Christians.

But in addition to this source of income to the Church, there existed the spontaneous practice of making offerings, which, dating back to the commencement of Christianity, prevailed very extensively, not only in the Western, but in the Eastern portion of the Church also, a mode, probably suggested in the first instance by what the Christians knew and adopted from Jewish institutions, borrowing as they did many other things. And which, undoubtedly, added to the pecuniary resources of the Church, whatever form they took, whether of 'first-fruits,' or 'oblations.' But with such care was this practice infused into the Christian system, that the very act of being allowed to make them was deemed a privilege; whilst a caution was enjoined, that, under certain circumstances, the act could not be permitted, as for instance, when in order to perform the act, certain duties had to be put aside, more especially when children or parents were concerned. It was equally true, where there were pre-existing any other duties analogous to the former, according to a saying of St. Ambrose, that "God seeks for no gift obtained by the hunger of parents[1]." Moreover, the privilege was

[1] The wording really is, "Non quærit donum Deus de fame parentûm."

denied to other classes—to those, for instance, who were under discipline for any offence, or where unseemly disputings existed, or when any one oppressed the poor, or in the case of undutifulness to parents. Indiscriminate giving, therefore, was not only discountenanced, but *prohibited*—those only being permitted to give who recognised the value of the duty, and the object for which the offering was made. Indeed, as laid down in the Apostolical Constitutions, the custom also obtained of bringing to the altar[m] the bread and wine which were to be used in the Sacrament of Christ's own appointment.

The Parish and the Benefice.

In course of time, however, a more definite state of things is reached, whilst the foregoing practices are not neglected. The action of the Church, not losing its missionary character, began to concentrate it more upon individual populations in their respective localities. Hence, what in one sense were called parishes (παροίκιαι) became Benefices[n] in

[m] "The gifts were brought to the altar, or communion-table (both expressions are used), by the *people*, and were recommended to God's acceptance by the officiating Bishop, or Presbyter. So there was first a kind of *lay-oblation*, and next a *sacerdotal* oblation of the same gifts to God. Those gifts consisted partly of alms to the poor, and partly of oblations, properly so-called, to the Church; and out of these last was usually taken the matter of the Eucharist, the bread and wine." "The oblation was twofold. Hence the whole service of the Eucharist came to be called the *oblation:* and to communicate, or to administer, in Church language, was *to offer*."—See *Waterland*, vol. iv. p. 477; also *Bingham*, *Eccles. Antiq.*, xv. ch. ii. §§ 1, 2; and *L'Arroque*, *Hist. of Eucharist*, p. i. ch. xiv. p. 30.

[n] With the old Romans the word conveyed the idea of an advancement to some higher honour or privilege than had been attained before, as implied in the proceeding from one step to another. Tacitus, in his Hist. 4. 48, speaks of those who had been promoted as 'homines beneficii ejus a quo evehebantur:' or elsewhere in Suetonius in Tib. c. 12, 'vel beneficiarii.' Then, again, in old inscriptions (see Gruter) we have such expressions as these, e.g. 'beneficiarii tribunorum, consulum, præfectorum,' &c. Again, we have the expression in another form when a recommendation is made to the Roman Treasury on behalf of those who had distinguished themselves in their respective offices, and for which they were to be further rewarded; as, Cicero pro Archiâ, "in beneficium ad ærarium delatus-est a L. Lucullo prætore." And this consideration was sometimes responded to by the gift being one of *land*, such being the acknowledgment in the special charge referred to; so also, in a Christian sense, was the term "benefice" used in connection with the spiritual charge. There will be no need to prosecute the

another—both words borrowed from other sources—but both borrowed to express the distinctive idea intended. In the one, we have the idea of contiguity of House to House, comprehending, therefore, not so much the notion of individuality, as that of a people brought together, be the numbers great or small which formed the community. But in the other term we have more of the spiritual idea implied—and so if we go further, and again speak of honour and dignity, we shall say no more than what the Roman people understood by it. For, heathen though they were, the term is theirs, to begin with; and, as in so many other instances of Roman policy as Law, it became transferred into the Christian system. I am not saying that Benefice and Parish are not, in some sense, identical terms. Only, that if we go into the root of the matter, the Christians knew very well, in their earlier history, that he who undertook the care of a Benefice, charged himself with a spiritual and heavy responsibility!

Now 'benefices' are said to be of two kinds, viz. those of a higher, and those of a lesser grade. Only it may be remarked, that the term is more correctly applied to the latter than the former, because the former was supposed not to want any designation of dignity, which existed in itself already.

Pluralities forbidden.

We have spoken before of the possessor of a spiritual cure being bound to give himself wholly to its supervision, without seeking, on the plea of change, for a release from his obligation. What brings

topic further. Suffice it to say, that the distribution of the property acquired by the Church, in tenths, first-fruits, oblations, and such like spontaneous offerings, was made according to the Church's own laws and regulations, without any external interference. Upon the Bishop devolved mainly the particulars of the division, but even this was subjected to synodical sanction.

About the fifth century, the division was made into three parts, sometimes four, viz., the Church (the building, &c.), the Bishop, Clergy, and the Poor.

In the synod of Agatho, A.D. 506, we have the following as to the alienation of Church-property, placing the interests of the Church in the fore-front of ecclesiastical responsibility: "Presbyteri, vel clerici, salvo jure Ecclesiæ, rem Ecclesiæ, sicut permiserunt Episcopi, teneant, vendere autem, aut donare penitùs, non præsumant."—Canon 22. See *Selvag.* ii. p. 157.

out this idea still more strongly was the condemnation of holding two benefices at the same time, as though the responsibility of one was held to be sufficient for a faithful discharge of the duties. Indeed, it was laid down by two Canons of the Council of Chalcedon that such an act could not be done except at the risk of deprivation—which came, be it observed, not from any external authority, but from the Church itself. Again by another Canon, passed at the same Council, it was decreed, that the Bishop who received into his diocese one who really belonged to another, and without the permission of the first Diocesan, should himself be deprived. On such like matters, where spiritual interests were supposed to be at stake, the Bishops and Clergy were placed, one may say, in the same category, so far as the law-ecclesiastical was concerned. The idea again was, as before stated, that an engagement once entered into, and contracted under the most solemn sanction, cannot easily be broken. Of course, in such a statement, we are only speaking as to the *general* principle, in order to shew what the tendency of Ecclesiastical legislation was upon the point. Exceptions can easily be found in this as in other things. Even on the occasion of the Nicene Council, already alluded to, Eustathius was translated from the See of Berea to that of Antioch. Moreover, in the African Church the opposite custom prevailed, extending itself so far, that it became in force throughout the Eastern Church.

NOTE.—It may be, in some respects, at the cost of repetition, that mention is made of the last brochure upon the subject alluded to in modern days. (See Chap. I. page 14.)

But the reference becomes more important, because, again, made by a well-known member of the Legal profession.

The quotation is taken as it appeared in the "Times."

"Mr. Tom Hughes, Q.C.—During the sitting of the Chester Diocesan Conference yesterday, presided over by the Bishop (Dr. Jacobson), a paper by Mr. Tom Hughes was read on 'Infidelity, and the methods employed for extending it.'

"Mr. H. said," (arguing on behalf of objectors to the Athanasian Creed), "that in his belief, one of the chief causes lying at the root of much of the want of our times was cowardice, so far as any collective or corporate action of the Church was concerned. We made idols of old armour and old weapons which did good service in the past, but were worse than useless in the present. No one reverenced the Prayer-Book more than he did, but for all that, there were points which ministered to infidelity. The most salient of these was the retention of the Athanasian Creed. While 90 out of every 100 of an ordinary congregation did not know the scientific meaning of such words as 'Substance' and 'Person,' it was notorious they did understand the Creed to affirm, that 'damnation' was a penalty declared by their Church to attach to inability to accept, intellectually, a series of abstruse propositions in metaphysics[o]. In the same way the Church's attitude towards physical science and its professors seemed to him to be driving the cleverest of our children into infidelity. No doubt the provocation from many (though not the ablest and the best) of these professors was very great; but what did this, what could this, matter to a Christian? Surely, we believed that the physical and visible world was God's, was created and ordered by Him, and therefore that every thing these men were

[o] "Metaphysical terms are here objected to. It is a little remarkable, that in the old controversy a little more than a century and a-half ago, it was by the use of metaphysical terms that objectors assailed the doctrines of the Church (Bp. Van Mildert's Review of 'Waterland's Life and Writings,' p. 32, &c.), undervaluing, if not ignoring, in the meanwhile, what sacred Scripture has laid down, together with the writings of antiquity, for the interpretation. With respect to the latter, 'Antiquity,' says Waterland, 'ought to attend as an handmaid of Scripture, to wait upon her as a mistress, and to observe her; to keep off intruders from making too bold with her, and to discourage strangers from misrepresenting her.' 'Antiquity, in this ministerial view, is of great use.' We do not resort to the Fathers 'to superadd new doctrines to Scripture, but only to secure the old.' And he shrewdly adds, 'It is much to be suspected, that many pretend a zeal for Scripture, who mean nothing by it, but to have its fences taken down, that they may deal the more freely or rudely with it.' 'They would exclude the Ancients, to make room for themselves; and throw a kind of slight upon the received interpretations, only to advance their own.'"

discovering, which was really true about it, was, and must be, a revelation of and from Him.

"It is added, 'the paper was coldly received,' and 'no discussion took place upon it.'"—Oct. 25, 1883.

That the reading of the above 'should have been received with coldness,' one does not wonder. Neither is it surprising, that no discussion should have been 'raised upon it' amongst a body of English Churchmen, who were assembled, together with the Bishop of the Diocese, for the purpose of consulting with each other upon Ecclesiastical affairs. The astonishment is rather, that the perusal of the document should have been listened to with patience, till the end was reached!

Let us take an analagous case, which is possible, though not very probable, affecting the profession to which Mr. Hughes belongs. Suppose, however, with the help of the imagination of a popular Novelist, some Ecclesiastic well informed in matters of his own Profession, but of ordinary ability with regard to secular law, should, at a public meeting, before a body of Lawyers, with one of Her Majesty's Judges at their head, take the opportunity of airing his idiosyncrasies, by assailing the old Statutes of the Realm as effete, worn out, complicated, and unintelligible when compared with the enlightened Legislation of the present day. And yet would the Public Conscience warrant the objector in so speaking of the Two, by way of comparison?

Facts speak to the contrary, when we remember how often the complaint has been made, that Parliamentary enactments are now-a-days devoid of technical precision, that the wording is often complicated, repeated, occasionally in expression involved, sometimes unintelligible, and therefore the cause of endless litigation, for the benefit of not one of Her Majesty's subjects, *except the Lawyers!*

Nay, most probably, on the occasion of such a spectacle as we have imagined, the *Judge himself* would deem it right to reprove the Theologian for his rashness, and lack of professional knowledge!

But further, the Lawyer, speaking for others, finds fault with the old Ecclesiastical terms, '*Person*' and '*Substance*,' to express in human language, what of all things is transcendently mysterious; i.e. the Deity before *Whom* even the highest of Angelic Intelligences veil their faces, in awe and unspeakable adoration!

And yet in the Christian Creed, or Creeds, the idea has to be expressed for Human Belief to lay hold of, although it can never comprehend the same, in *its vastness* and *immensity!*

"Canst thou by searching find out God? Canst thou find out the Almighty unto perfection? It is as high as Heaven; what canst thou do? . . . What canst thou know?"

Now, we must remember, and the historical fact cannot be repeated too often, that the Creeds were never intended to place stumbling-blocks in the way of the disciples of Christ, but the contrary. Much less were they ever intended as weapons of offence, but simply as instruments of *defence*, on behalf of "the Faith once delivered." "There are three Creeds[p]" (borrowing the quotation from Waterland), "the first, that of the Apostles; the second, the Nicæne; the third, that of Athanasius. The first was made for *instruction in* the Faith; the second, *for the explanation* of the Faith; the third, for the *defence* of the Faith."—*Ludolph. Sax. de vit. Christi.*

That we may respond to the present movement both in Germany and in our own country to commemorate the learning, the boldness, and the moral virtues of Martin Luther, I do not wish to forget one which he did really possess. What says this Protestant Champion about one of the three Creeds, the one more especially which has had to bear the shafts and denunciations of

[p] "Tria sunt Symbola; primum Apostolorum; secundum, Nicæni Concilii; tertium, Athanasii. Primum factura est ad *fidei instructionem*. Secundum, *ad fidei explanationem*. Tertium, *ad fidei defensionem*."

"Causa multiplicationis Symbolorum fuit triplex: *instructio fidei*, *veritatis explanatio*, *erroris exclusio*. Erroris exclusio, propter hæreses multiplices pullulantes, causa fuit Symboli Athanasii, quod cantatur in prima."—*Alex. Alens.*, part iii. Q. 69; *Menobr.* ii. p. 541; see *Waterland*, vol. iii. p. 246, note.

what are sometimes called "advanced" Theologians, or men of "free thought," some, probably, of those very men who are now so prominently extolling Luther? It is true, that Luther does not approve of every proposition in the Creed—but it is in such measured words as these: that it is "too lengthy[q]," and "too copious" even for the refutation of heretical Arians, whilst illustrating the doctrine (the important doctrine) of the Divinity of our Blessed Lord. Nevertheless, he adds, "the Athanasian Creed is like a *fortress of defence* (*propugnaculum fidei*) for guarding the first, which is the Apostles' Creed."

Again, that we may have a word for Non-Conformists, who have had their difficulties with regard to the dogmatic utterances of this Form of Belief—a Creed so much to be condemned, that, now, a learned lawyer thinks that his objection to two words employed will be enough to overthrow it!

Mr. Baxter (some of whose works many Christians have read with edification and delight) says in his "Method of Theology," p. 123, referring to the very points so often assailed by objectors as unscriptural and unchristian (but see St. Joh. Ep. ii. c. 1. vv. 10, 11) :—

"In a word, the damnatory sentences excepted or moderately expounded" (such a modest explication of the damnatory clauses, see in Dr. Wallis, &c.), "I embrace the Creed," continues Baxter, "commonly called Athanasius's, as *the best explanation of the Trinity*."

And vol. ii. of his works, p. 132, he says again,

"I unfeignedly account the doctrine of the Trinity the sum and kernel of the Christian religion, as expressed in our Baptism and Athanasius's Creed, the best explanation of it I ever read." —*Waterland*, iii. p. 251, note, and 246.

But then again, in the two terms objected to by Mr.

[q] "Athanasii scilicet Symbolum est paulò prolixiùs, et ad confutandos Arianos hereticos, aliquantô uberiùs declarat, et illustrat articulum alterum de Divinitate Christi Jesu—estque hoc velut propugnaculum primi illius Apostolici Symboli."—*Luther de Trib. Symb. Oper.*, tom. vii. p. 138.

Hughes, viz., '*Person*' and '*Substance*,' we have to consider them not only when first inserted in the Creed or Creeds, but how the words themselves conveyed a very different meaning to the old Greek and Latin mind, than what they would suggest to men of modern days. Moreover, it was the rising of incipient heresies, or the development of them, *which forced* upon the Church their adoption, although recognised before. The Praxean and Nöetian doctrine, followed by the better known and more formidable heresies of Arius and Sabellius, caused the expressions to be maintained. Upon the introduction of the former, which charged the orthodox doctrine with Tritheism, the terms 'Substance' and 'Person' were used, though fully recognised before. The Catholics pleaded that they did not assert *Three Gods*, but three Persons only—meaning by 'Persons,' 'real Persons,' i.e. not mere attributes, or emanations, or energies. (See Waterland's "Second Defence," vol. ii. p. 541.)

"When they drew a line and an utter distinction," says the great St. Athanasius (*Orat.* c. iii. p. 145), "between the Son's substance and the Father, ascribing unto Him an origin of being other than the Father, and degrading Him to the creatures, on this account the Bishops assembled at Nicæa, with a view to the craft of the parties so thinking, and as bringing the sense from the Scriptures, cleared up the point, by affirming the 'One in substance;' that both the true genuineness of the Son might thereby be known, and that to things generated might be ascribed nothing in common with Him. For the precision of the phrase detects their pretence, whenever they use the phrase '*from God*,' and gets rid of all the subtleties with which they seduce the simple. For whereas they contrive to put a sophistical construction on all other words at their will, the phrase only, as detecting the heresy, do they dread, which the Fathers set down as a bulwark (ἐπιτείχισμα), in like manner, as a συνδέσμον πιστέως (i.e. a bond which fastens together the various links of the Christian Faith) against their irreligious speculations, one and all."—(*Bright's Translation.*)

Indeed, the assertion in the Creed is no more than what the Greek writer Epiphanius had already laid

down: "Without the Confession of the 'One in Substance' no heresy can be refuted."

Moreover, Eusebius of Cæsarea speaks of the word ('substance') as one of old usage in the Church. Tertullian, a distinguished Latin writer in Africa, makes use of the phrase "unius Substantiæ," as he has also "de substantiâ Patris." Also, the two Dionysii are mentioned as using it. And before them, taking us back to the times of St. Paul himself, we have in St. Clement the expression of the *ἕνωσις τῆς μοναδικῆς οὐσίας*, the equivalent to '*ὑπόστασις* being *οὔσια*,' i.e. existence, essence, or Being itself[r]. Indeed, subsequently, the word *φύσις* was used as an equivalent term for 'Person.' But we are trenching upon the province of the Theologian. It is sufficient that the terms (however interpreted) form a part of our Creeds, which Creeds form a part of our Ecclesiastical Law,—the same, perhaps, sanctioned, whether directly or indirectly, by some of the Councils of the Church. At least, touching the very point under discussion, with regard to the Athanasian Creed, the Council of Toledo[s] (A.D. 633) cites a considerable portion of the Creed, adopting it into their own Confession (Waterland, p. 18, note). And so far from this being a *Roman* Creed (the Apostles' Creed is the Roman), the reception of the

[r] By the 'essence,' however, or 'substance' of God, a Church Council (Ancyra, A.D. 314) did not affirm any thing distinct from God, but *God* Himself, viewed in His self-existing nature (vid. *Tertull. in Hermog.* iii.). Nay, it meant expressly to negative the contrary notion of the Arians, that our Lord was from something distinct from God, and in consequence, of created substance. Moreover, the term expresses the idea of God *positively*, in contradistinction to negative epithets, such as infinite, immense, eternal, &c. (*Damasc. Fid. Orthod.* i. 4); and as little implies any thing distinct from God as those epithets, &c. See *Orat. Cont. Arian.*, notes, p. 34.

Indeed, the idea to be conveyed was the very opposite to aught which comes within the range of human sense in being visible or palpable. A history might be given of the various terms used, from time to time, to express the thought which, after all, is unspeakable and beyond comprehension, showing, however, the deep care and anxiety of former Christians to safeguard the Truth they would enunciate!

[s] "Ex eodem Athanasii Symbolo ea verba primi Capituli Toletani quarti Concilii deducta noscuntur, quibus dicitur, Patrem a nullo factum," &c.—*Baron. Annal.*, tom. iii. p. 436.

Athanasian Creed happens to be one of those things wherein the more Western Churches were beforehand with the Church of Rome, the latter borrowing it from the *Gallican*, and receiving the same into its own Office. Beyond all dispute, the Creed obtained in France in the time of Hincmar, about 850; and England, following in the wake of France, as it occasionally did (we have remarked) in early Christian times, on religious questions, there is clear and positive proof of the Creed being sung alternately (for then it was a hymn rather than a formula of Belief) in our churches in the tenth century, when the Saxon versions, still extant, were of standing use for the instruction[t] and benefit both of clergy and people. (Waterland (Bp. Van Mildert's Ed.), vol. iii. p. 184.)

But referring once more to these Ecclesiastical Councils, if we ascend in the scale of their importance, shall I be saying too much, if I add as a reminder, that some of them (œcumenical) are sanctioned by us as authoritative by Statute?—

"I presume" (is the dogmatic utterance of Mr. Justice Coleridge in the judgment on Dr. Hampden's Case, p. 454) "the authority of these Councils, on a matter of Church-government in England, before the Reformation, will not be questioned."

And then his Lordship adds,—

"*Even as to matters of doctrine, their authority is expressly recognised by the Legislature after the Reformation.*"—1 Eliz., c. i. s. 36.

[t] I add the following, as shewing some of the historical changes which the Creed has experienced in our own country:—

"In the Primmer of 1539, and another of 1555, where the version is made from the Latin, the English title of the Creed was, 'The Symbole or Crede of the great Doctour Athanasius, dayly read in the Church.'

"In King Edward's Prayer-Book, A.D. 1549, it is barely entitled, 'This Confession of our Christian Faith;' and it was ordered to be *sung*, or *sayed*, upon 6 feasts of the year. At the revisal of the Common Prayer, in 1552, it was appointed to be used on several feasts of the year, the whole number thirteen. But the *title* still continued the same, till the last review under Charles II., when were added thereto, *commonly called the Creed of St. Athanasius*." The Athanasian Creed is cited more than once by Lyndwood, lib. i. tit. i. pp. 5, 6. He calls the Nicene Creed *Symbolum Missæ*.

Whatever influence, therefore, the statement may have with the Theologian, who looks for higher grounds for his belief than this, it will not be without significance, and weight, upon the mind of the Common Law, or Equity-Lawyer.

Lawyers are too apt to look into one side of a question; their training and experience pre-dispose them. The best of our Theologians are taught to grasp both sides of a proposition, whether heretical or otherwise; and then they fear not to declare with boldness, on *the authority of the Church, what they believe to be the Truth!*

It may as well be added that, with reference to the foregoing or analogous topics, Waterland successfully encountered such men as Clarke, Whitby, Sykes, and Jackson, not to mention many other inferior antagonists, who occasionally called him forth, but who are now almost unknown by name or reputation. The value of some of his writings is far beyond that of merely polemical treatises. They may be read with almost equal benefit by persons conversant, or not, with the several controversial writings of that period. A new edition of some issued, from the Cambridge University Press, in the year 1800. In the year 1815, a new edition of his "Sermons at the Lady Moyer's Lecture,—a Lecture established by her for the express purpose of upholding the Trinity and Divinity of our ever-blessed Saviour," was printed at the Clarendon Press at Oxford. These two volumes, together with Dr. Glocester Ridley's "Sermons at Lady Moyer's Lectures on the Divinity and Offices of the Holy Ghost" (also reprinted at Oxford in 1802), may be recommended to all Divinity Students, as forming together a compendium of all that is necessary to establish them in the truth of that fundamental article of our faith, the doctrine of the Trinity. To these the critical "History of the Athanasian Creed" may be considered as a valuable supplement.

And for such as are desirous of going further into the discussion of these subjects, the "Three Vindications of

our Lord's Divinity," will supply irrefragable arguments upon almost every point that has hitherto been contested. (Bp. Van Mildert's "Life, &c., of Waterland," p. 97.)

In the above we may notice how, in the earlier years of the present century, the two Universities moved together in a cause which touched one of the very objects of their own existence. Drawing their weapons of defence from a well-furnished armoury, they championed some of the fundamental Articles of our Christian Faith.

CHAPTER VII.

JURISDICTION OF BISHOPS AND PRESBYTERS.

"Neither[a] as being lords over God's heritage, but being ensamples to the flock."—1 *S. Pet.* v. 3.

Episcopacy in Primitive times.

IN the foregoing, in one case, the Presbyter and Bishop have been placed in the same category, not with any intention of comparing the one with the other, or in any way disparaging the authority and high dignity where such exist. The object, rather, is to signify that all, of whatever rank or order in the Church, were alike subject to *the Law of the Church.* In other words, there was not one law for one order, and another, for another.

The very term in use particularizes the nature of the episcopal dignity, that it was one of *overlooking* and *inspection.* An inspection, therefore, when it came to be adopted into the Christian system from the earliest times, which was intended to subserve the weighty and highest interests of Christ's flock. The bishop was the 'guardian' and 'keeper of the sheep,' who, whilst he defended the individual members of the flock from harm, saw that due provision was made for their spiritual welfare. Other terms are used, and they are many, to designate this particular order of the ministry in the Church. They are sometimes called 'principes,' 'rectores,' 'præfecti,' 'præsides,' 'antistites,' and generally with the addition of 'Ecclesiæ,' that they may be distinguished from those occupying a high but *secular* position, and to whom the several terms, without the addition alleged, may be equally applicable. Then there is the still more ordinary title of 'prælatus,' applicable, no doubt, to the individual Bishop, but not exclusively to that member of the ecclesiastical body. And in order to shew the nature of the Commission en-

[a] It is curious that this text is not to be found in the Vatican MS.

trusted to them, in the relation which they held to the baptized members of Christ's Church, whether through themselves, or through others, who by them had been appointed as deputies, they were entitled 'Fathers,' i.e. in current language, 'Fathers in God,' to distinguish them from those who have the title by a natural claim. Again, at an early period of Church history, Bishops have been styled 'Apostoli[b],' to mark them off from the order of Presbyters, the reason being, that in the Apostolic age the names of 'Bishops' and 'Presbyters' were insufficient of themselves to distinguish the one from the other; but subsequently, for a cause self-evident, they were entitled not 'Apostles,' but '*the successors of the Apostles*[c].'

But once more, as the most remarkable title of all, with the view of shewing their distinctive pre-eminence, we meet with such names as these, 'summi sacerdotes,' 'pontifices maximi,' 'principes sacerdotii,' and, what may appear extraordinary to some, even *papæ*[d].

It was laid down in the Council of Sardis, Can. vii., *where* Bishops were to be placed. The object being, to bring their influence to bear upon the populations, either in the way of converting, or to strengthen disciples in their Christian profession. Hence towns were selected as centres of their work, not a village, or small city, i.e. where a single Presbyter would suffice—a rule, however, which was not always strictly adhered to.

For there is abundant evidence from the signatures appended to the proceedings of various Councils, and this may be remarked more particularly of the African Church,

[b] See Theodoret's Comment., 1 Tim. iii., and Philip. i. and ii.

St. Cyprian also in his Ep. 65, says, "Apostolos, id est, Episcopos et præpositos Dominus elegit."

[c] "Ex eodem Cypriano, Epist. 69, Hieronym., Ep. 1, aliisque veterum testimoniis perspicuè educitur Episcopos Apostolis vicariâ ordinatione succedere."

[d] The term was applied as a title belonging to all the clergy. For reverence, the junior bishop so called his senior: it is used of SS. Cyprian and Athanasius, &c. But in the eleventh century, in 1072, in a Roman Synod, the name was exclusively given to the Bishop of Rome. See Baronius in Notis. ad Martyr. ad diem x. Jan.

that the places selected were even small and insignificant, the influence, perhaps, being made to extend itself the further, when other populations required the oversight, scattered though they might be. And if I may add the expression, so strongly was the principle extant amongst the African Christians, that one of their great writers and rulers, whom I have repeatedly quoted, went so far as to assert, that not only was the Episcopal ingredient a necessary element amongst the professed followers of Christ, but that the Church could not exist without it; "Scire debes," says S. Cyprian to Papian: "Scire debes, Episcopum in ecclesiâ esse, et ecclesiam in episcopo; et si qui cum episcopo non sint, in ecclesiâ non esse."

Whether we receive the sentiment contained in the statement, or not, it is desirable to record the opinion of so distinguished a man upon the question. At the same time, it is evident, whatever might be held as an abstract theory, the same has never been received as a matter of faith, or as a dogma of the Universal Church. After some lapse of time, independently of other causes, the tendency of the monastic system was to weaken it [e].

To meet the difficulty, then, a distinction began to be drawn between Diocesan Law *per se*, and the law of jurisdiction, as exercised by the Bishop. Diocesan Law was held to extend itself over all ecclesiastical affairs and rights, which belong to a Bishop, and are connected with the Cathedral and Synods, &c. From this power the Monks were held exempt, but they were not freed from the Bishop's power either of "order" or "jurisdiction" generally, unless they gained it by special privilege [f].

[e] "Episcopum specialiorem quarundam personarum curam gerere oportet, uti pauperum, orphanorum, viduarum, peregrinantium, ... atque etiam Monachorum, quos speciali Episcoporum curæ subjecerunt Patres Chalcedonenses cap. iv. and viii., quamvis posterioribus temporibus *in id unicè incubuerint, ut Episcoporum excuterent jugum.*"—*Selvagg.*, vol. i. p. 239.

[f] Selvaggius says, "Hinc factum est, ut lex diæcesana a lege jurisdictionis distingueretur: et legis jurisdictionis nomine omnis Episcopi potestas intelligeretur, quæ in dando, vel faciendo consistit; ideoque utraque simul potestas modo explicata, *ordinis* scilicet et *jurisdictionis:* nomine verò legis diæcesanæ potestas significaretur in res ecclesiasticas, et jura Episcopo debita; qualia

The Rural Bishops.

Now in descending to the consideration of the order of Presbyters, we shall the more easily attain our object, if the attention is first directed to the office held by those, who, at a later period, acted as co-adjutors to the Bishops, taking the name of Chorepiscopi, i.e. (τῆς χώρας ἐπίσκοποι) Bishops of the country. It has been mentioned by many Canonists, that, with the name even, they were simply Presbyters of the Church, and nothing more, bearing the title not *de jure*, but *ex officio*. Whereas there have not been wanting those who could speak with authority (our learned Hammond amongst the number), and have maintained, that although in some particulars they fell short in the requirements, they were, virtually, Bishops, and as such have been accounted in the ancient Canons. On the other hand, there is the objection to be met, that not only by the Canons, but from 'Apostolical tradition' it was needful, that a Bishop, on his being appointed to his office, should have the imposition of hands from *three* Bishops, whereas, on the appointment of a Rural Bishop (according to the Council of Antioch, Can. 10), one was deemed sufficient. Further, it appears that this very question was raised in the history of the Church in Spain, and Agapus, a Bishop of Cordova, was reproved for delegating the duties which belonged to himself, as Bishop, to one of the inferior order. And what is still more to the point, the additional reason was given, that according to the Canons of the Church in Spain, the Chorepiscopus and the Presbyters were considered as being in the same category. And a well-known Canonist[g], belonging to the Neapolitan school, asserts, that whatever duties were assigned to these Bishops were simply those which Presbyters themselves could perform.

cathedraticum, synodaticum, et similia . . . . atque ita a lege diœcesanâ Monachi exemti haberentur, haud verò a lege jurisdictionis," &c. Vol. i. l. 1. tit. xv. c. 8.

In the wide sense of the word, however, 'jurisdiction' is the public power of deciding and executing criminal and civil causes. See Voet. Com. ad Pand. l. ii. tit. 1, s. 1.

[g] Selvaggius.

Nevertheless, the very name, and other reasons which might be given, would lead us to form a different conclusion. And the name *is* of value in the settlement of a difficulty under such circumstances,—at least, it proves, on weighing the arguments on either side, to which side the balance most inclines. It appears this body had the charge of some of the lower offices of the Church. They took cognizance of the rural clergy, as if in those times there was less learning, and less ability, amongst *them* than amongst their fellow-labourers in the cities and towns[h]. As additional duties, they gave letters 'dimissory' to the rural clergy in passing from one part of a diocese to another. They took care of, and, no doubt, inspected, the *consecrated* edifices for Christian worship, reporting the same to their superior officials; and in worship one distinction was reserved for them, that, in the celebration of the Communion in their own town or city, they took the first place as the 'Celebrant,' notwithstanding the presence of any Presbyter, or even the chief Bishop of the diocese[i]. In short, if we speak in the language of modern ideas, the bishop in question came nearer to our notion of a suffragan bishop, which, probably, is but an offshoot of the older institution—unless we go nearer to the Presbyter, and affirm, that it is rather the later office of the dean or archdeacon which is the outcome. At all events, it is somewhat singular, that with all the antiquity surrounding the choro-episcopal office, and all the changes which it gradually underwent, it was in the Church of Gaul, more especially, where the office lingered longer. And the Church of Gaul, as every reader of Ecclesiastical history is aware, was not without its influence upon the early Church of our own country, by virtue of its proximity and long-established custom.

The order of men, therefore, of whom I have been

[h] For more particulars, see Thomass., p. 1, lib. ii. c. 1, not. 15.

[i] "Curabant agrorum presbyteros, et ecclesias rurales; quas et in creditâ sibi regione visitabant. In ecclesiâ oppidanâ sacris operabantur, etiam præsentibus episcopo et presbyteris urbis: quod sane presbyteris ruralibus non licebat. Tandem privilegio fruebantur sedendi, et suffragia ferendi in conciliis."—*Selvagg.*, lib. i. tit. xvi. c. 4.

speaking, formed a connecting link between the Bishop and the Presbyter.

I have spoken of the difficulties which appeared in the relation of the two terms. But the difficulty is easily explained. In one sense, both were ἐπισκόποι, for both were 'supervisors,' or 'overlookers,' of the flock of Christ. And, to speak of subsequent times, both were 'Prælati,' or Prelates, in one sense of the word. Still, no point of history is more clearly alleged than that there was a wide distinction in the use of the terms, as applied to the two orders in the Christian Church—the single explanation being, that he who was charged specially with the duties, and had the custody of the privileges, of the Christian Church, in the several Dioceses into which a country was divided, was ὁ Ἐπίσκοπος, or *the* Prelate.

The Presbytery.

After the foregoing statement it will not be necessary to go into any lengthened disquisition upon the second order of the Christian Ministry. We are indebted, as in so many other things, to the Greeks[j] for the term itself, as used by St. Paul and the writers that were either contemporaneous with, or who immediately followed him. And to the Greeks also we are indebted for the idea which accompanied the use of the term, that it is not necessarily of age we speak, when the title is applied. By the title "presbyter" we allude to that rather which age is supposed to give, viz., wisdom and other characteristics belonging to life's experience and opportunities of learning—all of which, with God's blessing, contribute to form the character specified. Indeed, so important in its bearing was the term considered by the primitive Christians that, when strict accuracy was not studied, they applied it to the other order of the Christian Ministry[k], irrespective of any age, on the ground that the

[j] Aristotle uses the expression "τιμιώτατον τὸ πρεσβύτατον: hinc simpliciter πρεσβύτατον dictum legimus, quod maximo haberetur in pretio, essetque maximè venerandum."

[k] We might say 'orders' in the plural number. For according to Balsamon, by the 15th Can. Council of Ancyra, "nomen aliquando omnibus clericis datum est." Once for all, I may say here, I am indebted to Hefele's "History of Christian Councils."

same qualifications are expected to exist there, and from the same sources. The statement comes out clearly in the history of the African Church. Without specifying in detail the several duties which officially belong to this Order of men, in blessing and in preaching, in the visitation of the sick, and though last, not least, in the ministration of the Sacraments,—we may add, these duties they discharge equally with their Superior, although, in their own case, only by virtue of the authority derived from the Bishop at Ordination.

St. Ignatius[1], in his Epistle to the Smyrnæans, says: "Sine Episcopo nemo quidquam faciat eorum, quæ ad Ecclesiam pertinent." Again, Tertullian, in his book on Baptism, says: "Dandi quidem baptismum jus habet summus Sacerdos, *dehinc* Presbyteri, non tamen sine episcopi Auctoritate." This is evident throughout the whole range of Ecclesiastical history. Even when a statement meets us, that in case of sickness, or in the unavoidable absence of the Bishop from other causes, certain offices of the Bishop could be performed by the Presbyter. Or again, when the Bishop, being present, delegated certain duties to the subordinate ecclesiastical Officer, there still remained certain special duties which could not be delegated, and therefore could not be discharged by any one but the Bishop himself.

The Presbyters as councillors and assessors of the Bishop.

The point, however, independently of its parochial responsibilities, which shows the importance of the Presbyterate, is the *legal* and *consulting* position which it occupied in connection with the practical working of the Church. If it was the special office of the Bishop to guard the Canons of the Church and promulge them, the several dioceses being periodically visited, that Christians might be reminded of the old Canons, whilst the new ones were made known, it is equally true, that it belonged to the

[1] It may be noted here, that the very great deference to the Episcopal office which appears in the longer Greek Rescension of the Ignatian Epistles is not so conspicuous in the shorter Greek, and is still less apparent in the Syriac version.

Presbyters to sit in Church Council with their Bishops, whilst the Deacons stood behind, to confer, to discuss, and to settle business with legislation. In after generations, it was the Canons of the Cathedrals to whom this privilege was assigned of being the counsellors (*consiliarii*) and assessors (*adsessores*) of the Bishops. But to go back to more ancient times, and therefore nearer to primitive custom, which we are taught to reverence because it is nearer the fountain-head, the office was really the prerogative both of the Presbyters and Deacons of the Church. To speak in general terms, and to represent the matter in its more beautiful and perfect form, as a piece of Ecclesiastical machinery, I would cite the words of St. Gregory Nazianzen. They are only a dream; nevertheless, dreams have sometimes been called the shadowy representations of what the mind has mused upon in its waking hours. And they are interesting, as the expressions of so great and holy a man!

Gregory Nazianzen's "Dream."

> "Sede altâ, haud altâ considere mente videbar:
> Nam neque per somnum mente superbus eram:
> Presbyterique graves sellis utrinque sedebant
> Demissis, ætas lecta, ducesque gregis:
> Vestibus in niveis adstabat turba ministra,
> Splendorem referens agminis Angelici."

In other words,—

> "High I seem'd to sit, without being high,
> For e'en in sleep I seem'd to sit so low;
> Yet lower still grave Presbyters were seen,
> With 'Age' to lead, no flocks refused to go:
> In snow-white vestments stood the 'serving' throng,
> And, as from Angels, flashed the rays along."

But discarding such dreams of fancy, and what is more advantageous to the Inquirer, let us study the subject in its more practical details. It mattered not what the Council was, whether of the larger or the smaller kind, the Presbyters constituted

The Constitution of Councils.

an important element amongst those who took part in the deliberations. Naturally, from their experience, they could speak with advantage, because drawn into the closest contact with the masses of the populations. They could, and did, communicate any trials or difficulties, to which, originating near themselves or others, the Church, as a body, was likely to be exposed. Or again, to look at a more serious state of things, they could give and receive counsel when the faith became endangered by any heretical form of Unbelief, the standard of appeal being the Holy Scriptures as interpreted by the Councils or the Canons, which, from time to time, they had accepted[m]. So, without proceeding a step further, we at once see a motive given to every one for the study of Ecclesiastical Law, *both in its Divine and human* aspect, as to what the Church had received.

With regard to individual opinions, they were subjected to the common test, and were approved of, or rejected, accordingly. Throughout the proceedings of these Councils, it is evident *why* they were held, not simply that they might consume the time in arguing, pass abstract resolutions, and then depart. In every instance, at least in the majority, the main object was to argue against error, do battle with heresy, that what they upheld as the 'Faith' might be established. Such an expression might seem to some hard and unchristian. But is it aught different from what Scripture itself has laid down? What says St. John, whom of all others we single out as the disciple of Love? "Many deceivers are entered into the world, who confess not that Jesus Christ is come in the flesh. This is a deceiver and an antichrist." . . . . "He that abideth in the doctrine of Christ, He hath both the Father and the Son." "If there come any unto you, and bring not this doctrine, receive him not into your house,

[m] "Four great heresies, it is well known, occasioned the summoning of what Hooker calls 'four most famous ancient General Councils.'" From Judgment of Mr. Justice Coleridge, p. 454, Rep. on Bp. Hampden's Case in the Queen's Bench.

neither bid him God speed[n]." Did the Apostle dally with the error that struck so vitally at the heart of the Christian faith? Did he, for one moment, tolerate it as a thing indifferent, much less compliment it as a mere question for an individual Conscience? Others have consciences also—and not least of all, *the Church*, which holds the truth in keeping—St. Paul denominating the same as "the pillar and ground of the Truth." This Apostle also, in his natural boldness, as we might expect, speaks out his mind, as if with a trumpet, although the words need not be quoted.

Again, St. John carried out in the life what he had laid down in words[o], history telling us from more than one source of information that this was the case.

Then why should we wonder that such a feeling of jealousy on behalf of the Faith should be exhibited at these various Councils of the Church; or that, on a perplexing point of doctrine, a plain categorical proposition should be enunciated—stating things which are hard to be understood, or declaring as a truth to be received, what is really beyond human comprehension? It is true, one may regret some of these as militating against 'the simplicity that is in Christ,' whilst another may even go beyond, and assert, Why should the human intellect have its freedom fettered and be told to keep within the bounds

[n] "Vetat hìc S. Johannes omne colloquium, omne consortium, omne commercium cum hæreticis, hoc enim est plus quam ave."—*Cornel. a Lap. in loc.*

[o] "Ingressus enim (S. Johannes) balneum, mox ut in eo Cerinthum conspexit, ex eo se proripuit, dicens suis: Fugiamus ocyùs, ne balneum, in quo est Cerinthus veritatis adversarius, extemplò corruat. (St. Irenæus. l. iii. c. 3, and Eusebius, l. iii. c. 13.) Additque S. Hieron. (Dial. contra Lucifer) post S. Johannis abitum illicò Cerinthum cum sociis, balneo ruente, fuisse oppressum."

St. Polycarp, a disciple of St. John, takes up this very idea expressed by his Master, and enlarges upon the same, adding his own strong and heavy opinions, where the Truth, as it seems to him, was in jeopardy.

". . . . qui non confitetur mysterium crucis, ex diabolo est; et qui detorserit eloquia Dei ad propria desideria, et dixerit neque resurrectionem, neque judicium esse, hic primogenitus Satanæ est."—*Epist. ad Philipp.*

For more, see Comment. *Corn. a Lap.* in 2 Epist. S. Johann. v. 10.

that Revelation has laid down? There are mysteries in God's kingdom of nature[p], as well as in His kingdom of grace. Some of the former we leave alone, and do not dive into. Then, why should the others be invaded, when, sometimes, there is, to help towards the solution of the difficulty, *a priori*, more of doubt than of reverence?

The practical benefits of Councils.

Thus, therefore, we see an additional cause for thankfulness, that, amid all the perplexities and complications which were necessarily inherent in the consideration of such vital questions, the responsibility was not, in olden times, thrown upon one individual only, however learned, or distinguished for ability, he might be. Since he who presided over the deliberative body, had not only to enunciate his own opinions, but to gather up the opinions of others, some, perhaps, as learned and as able as himself.

And what adds to the importance of these Councils was the fact, that the subjects for discussion were not confined to theological topics, or matters even of a cognate kind. Embodied in them was a species of Court of Justice, in which other matters of a wider range had to be adjudicated upon, and not only those which concerned ecclesiastics in particular, but laymen also. If, for instance, a layman had a charge against an ecclesiastic, the matter could be examined into here, and evidence advanced on either side, and a judgment given. Or suppose again a case had arisen between a bishop[q] and one of the clergy,—or, *vice versa*, if a clergyman thought his treatment by his bishop was not consistent with what *he* deemed right,—the court was opened, and the case was gone into, and finally settled. Or, to put the matter in a more modern form, and which has become too fami-

[p] "Hardly do we grasp aright at things that are upon the Earth, and with labour do we find the things that are before us: but the things that are in Heaven, Who hath searched out?"—*Book of Wisd.* ix. 16.

[q] It belonged specially to the '*Provincial*' Councils to take cognizance of such cases as these.

liar to us all, when the bishop held that there had been a defiance of Ecclesiastical rule; then here would the remedy be found without delays, which, of themselves, constitute a penalty, both to Plaintiff and Defendant. The case would be investigated by those who were acquainted with the law—not with law generally, but with the *technical* knowledge which matters in Ecclesiastical Law required.

CHAPTER VIII.

CHURCH AND STATE.

"The multitude of the Wise is the welfare of the world, and a wise King is the upholding of his People."—*Wisd. of Sol.*, vi. 24.

Administration of Law by the Councils compared with the present state of the Church of England.

IT may be alleged, and very justly, that the matters of which we have spoken in the preceding chapter[a] have been altered by the Statute Law of the Realm; and it may be in more countries than our own. But that is not the question under consideration. The object is, to give a history how remedies *were* found to obviate grievous, but unnecessary, evils. The Church had that power *within herself*[b], as a part of her sacred and constitutional existence. At all events, the question could be fairly asked,—if, in imagination, we could turn the world back again to the centuries adverted to, would it be necessary to inquire, as in modern days, what is meant by an "Ecclesiastical Court[c]?"

[a] Lord Coke states that questions of doctrine are to be tried according to the Law divine and the Canons of the Church. One may fairly ask whether this principle is fully carried out *now?*

[b] It may be well to give the extract in full, as showing the large and comprehensive nature of the power. And besides this, as catholicity, i.e. universality, was the great object of Christianity, so the very machinery which the Church employed in the administration of her affairs was of the same large and comprehensive kind.

"De synodorum provincialium auctoritate fusius Theologi: illud hìc obiter juvat animadvertere, hasce synodos per octo priora Ecclesiæ sæcula ordinarium veluti fuisse tribunal ad dijudicandas causas non modò presbyterorum, monachorum, clericorum, et laicorum, si quid contra clericos haberent; verùm etiam episcoporum, ac ipsius Metropolitani; et quidem judicio definitivo," &c., &c. Vid. Epist. Episcop. Africæ ad Zachar.—*Selvagg.*, vol. i. tit. iv. c. 32.

[c] See above, p. 27.

The Presbyters in Diocesan Synod.

It would be out of place to enter into all the *minutiæ* connected with the proceedings of the various and multitudinous Synods. But this we may remark, as concerning the Presbyterate, that the principle advanced on behalf of the same comes out clearly in the less important assembly of a Diocesan Synod. Here we are told that the Presbyters formed the 'Senate[d]' of the Bishops; and in a Canon of the African Church (Conc. Carth. iv. can. xxiii.) it is ruled, that while the Bishop, as of right, passed the judgment in a case propounded, the act was useless *without the confirmation of the Clergy*[e].

The authority of the Bishop subject to the Law.

In so speaking, however, it must not be supposed that there is the least intention of attempting to detract from the power or dignity of the Bishop[f]. The former was large, if only we speak of him as, *ex officio*, presiding at these Ecclesiastical assemblies—being, in fact, *the pivot* around which the entire proceedings turned. Nothing could be done without him; since nothing could be suggested for discussion but what was submitted, *first*, for his approval.

Besides the Church-Synods, there were also Synods

[d] The judgment of 'authority' belonged to the Bishops—the judgment of 'doctrine' was permitted to the Presbyters.

[e] The wording of the Canon is, "Ut Episcopus nullius causam audiat absque præsentiâ Clericorum suorum; alioquin irrita erit sententia Episcopi, nisi Clericorum præsentiâ confirmetur."

Here we may remark, as for other reasons, so also that we may see the connection between Canon and Civil Law, these assemblies were sometimes styled "presbyteria et concilia civilia."

[f] Upon the subject of the dignity of the Bishop, Justinian speaks, using the terms, 'Vir reverendissimus.' The feeling expressed by the title appears most strongly laid down in the Eastern Church; but it soon, as was natural, made its way in the Western division of Christendom.

"Vocis 'episcopi' etymon inquiramus. Ἐπίσκοπος igitur græcè, latinè interpretatur 'Inspector:' hinc Plutarch. Θεοὶ χρηστῶν ἐπίσκοποι, καὶ πονηρῶν ἔργων, Dii bonorum *inspectores*, iniquorumque operum, Item alicui rei gerendæ *præfectus:* hinc idem Plutarch. in Pericle: πάντων ἐπίσκοπος Φειδίας. Exponitur etiam '*Custos:*' apud Theocr. idyl. vi. Rectè igitur apud Christianos sacri gregis inspectores, primique custodes, ut et æternæ salutis procurandæ præfecti a primis usque temporibus dicti sunt *Episcopi.*"—*Selvagg.*, vol. i. p. 227, lib. i. tit. xv. c. 1.

held of a mixed character, partly civil, and partly ecclesiastical. With regard to these Selvaggius states: "Illud hic omninò animadvertendum, in regiis hisce conciliis[g] licet ubi de civili politiâ ageretur, æquè Episcopi ac Comites conspiraverint; attamen in *ecclesiasticis discutiendis, finiendisque negotiis præcipuas*[h] *Episcoporum fuisse* partes: id quod tum ex pluribus, tum vel maximè ex eorundem actis evincitur, in quibus plerumque decretorum fidem, moresque spectantium auctoritas nonnisi Episcopis tribuitur; tum regem et optimates iisdem tantummodo consensisse adjicitur[i]." Only in each and in every case, whether the Synod was purely ecclesiastical, or mixed, and whether Bishop, Nobles, or Clergy are spoken of, none could do anything beyond the scope of its own legal powers.

Mixed Synods.

We can reach the same conclusion in another way. There is no fact more clearly laid down in old Ecclesiastical Law, than that the Clergy, in all ecclesiastical matters, should seek for a settlement of difficulties, or be brought before, a purely spiritual Court. In like manner it is equally clear that the Church, through her Clergy, was not to meddle with such cases as were beyond the peculiar province of the Church.

"In causis ad regiam potestatem spectantibus judices ecclesiastici jus ne dicunto." Upon these, and such-like questions, laymen alone could adjudicate; implying, therefore, that if the Church were restricted from her freedom of action in one direction, she might fairly claim

The Roman Emperors respected the right of the Church to manage its own affairs.

[g] They were known sometimes by another name:—

"Concilia regia, dicta interdum *comitia*, ea sunt, quæ ex Episcopis æquè constant, ac ex optimatibus, et comitibus regni, ut omnium suffragiis leges condantur ad utramque politiam, ecclesiasticam scilicet, et civilem constituendam. Hujus generis concilia frequentia fuisse Constantinopoli observat Thomas. l. iii. par. ii. c. 46, frequentissima verò in Galliis satis constat."—*Selvagg.*, vol. i. l. i. tit. iv. c. 44, p. 127.

[h] It may be remarked with respect to the Greek Church, that a Council was at one time in constant session at Constantinople for the general purposes of the Church: "Perpetuam fuisse synodum, cui regiæ urbis Antistes præsidebat, ac difficiliores quasque Ecclesiæ orientalis causas cognoscebat, ac definiebat."—*Selvagg.*, vol. i. p. 130.

[i] Selvagg., vol. i. l. i. tit. iv. c. 45, p. 128.

her own in another. To go back to earlier historical record, when with respect to the summoning the Œcumenical Council at Nicæa, Constantine was requested to use his imperial authority, he did so exercise it. But Ruffinus in his account gives this addition to the statement, that it was done *ex sententiâ sacerdotûm.* And hence, because of the acquiescence so given, the Greek Fathers allege, that it was the *joint* action of the Emperor and Bishop of Rome. Another, and, perhaps, a still more striking instance, is to be found in the case of Valentinian, the Emperor. He was requested by the Bishops of the Hellespont and Bithynia to summon a Church Council together. His answer is subjoined in the Historian's words, "Sibi, qui unus ex laicorum numero erat, non licere se ejus modi negotiis interponere, ideoque Episcopos seorsìm per se, ubicunque libitum esset, posse in unum convenire."

This matter of non-interference ('non-interponere' is the expression used by the Emperor) extended itself, in course of time, over a wider range of Ecclesiastical business; so that, as it has been already stated, the Church had her own Courts of Judicature, her own distinctively, to decide her own questions, in her own way, i.e. as the Law of the Church permitted and sanctioned. But lest this admission should carry us too far in one direction, it is not less clear, that all the while these principles were laid down and acted upon, every deference was intended to be paid, and was paid, to the Secular powers as of Divine Authority[1]. The Law was promulgated, that no public assemblies could be called of the nature of a

[1] The famous Theologian and Civilian, Suarez (whose doctrines are summed up ably by Hallam, lib. iii. c. iv. s. v.) says, that the political power of government, considered *per se*, is *juris divini;* but the power vested in a particular man is *juris humani.* Cf. Sir George Bowyer's *Legal Readings.*

Indeed, Suarez lays it down, as a principle, that all human laws are originally derived, in some way or another, from Divine law; and he cites the striking passage from St. Augustine (de ver. relig. c. xxxi.), "Conditor legum temporalium, si vir bonus est et sapiens, legem æternam consulit, . . . ut secundum ejus immutabiles regulas, quid sit pro tempore jubendum vetandumque discernat."—*Id.*, p. 119.

Church Council, on the largest scale, without the Prince or Secular Authority being consulted, the reason assigned being, "Ne quid detrimenti respublica pateretur." But on a smaller scale, where there was no apprehension of such an issue, that damage would, or could, accrue to the State, and where the matters in question rather affected the Church than the State, then the Church was left to her own independence. Insomuch that the Clergy, not only under ordinary circumstances, but in matters of dispute, resorted to these Courts for judgment, and were *forbidden to use any other.* One can understand this, when the adjudication was to be upon a spiritual question, in which the technical knowledge was required. And, where such was not the case, through the question being of a secular kind, even then, perhaps, was the concession made; and if greater legal learning could be brought to bear upon the subject in dispute, there was more confidence that the decision would be just and righteous. And further, in the course of time, Laymen as well as Ecclesiastics were in the habit of frequenting these spiritual Courts, in disputes about secular affairs.

So in England the rights of the Church were respected.

This is not saying too much, when we recollect from the days of Constantine, how, when consulted upon such matters, *he* unhesitatingly referred the Suitors to the Authorities of the Church. And downward, long and long before our High Court of Judicature was thought of, in our own country, as the off-shoot of the old system spoken of, Bishops sat conjointly with the Secular Judge, to help in the forming of a decision[k]. And especially was this the case, when disputes arose of a mixed character, i.e. partly spiritual, and partly secular; the Bishop might be present to give an opinion, according to Ecclesiastical Law[l]. I remarked, "This is not saying too much," ac-

[k] This was the case before the Conquest.

[l] It would seem, according to some authorities, that questions purely spiritual, as cases *pro salute animæ*, were dealt with by the spiritual authorities alone. See *Gibson's Preface*, p. xxiii., and *Bigelow's History of Procedure*, which is cited in the Appendix below.

cording to the record of history; because of all other sections of Society, the Clergy, or at least a section of them, must have had some knowledge of legal principles from their very education. They had, through the Civil Law, succeeded to the stores of information which the great Luminaries of Roman Law had bequeathed, the principles of which were in process of moulding, and fashioning, what would eventually become the foundation of European Law itself. I may mention Sir James Mackintosh, a high authority with great learning and philosophical candour, speaks (see p. 157, preceding chapter) very strongly of the debt that is due from civilization to the Church, through her authoritative representatives, for the groundwork of much modern Law. And now, the great effect of the Canon Law appears, gradually, to be receiving more recognition than it once did.

The changes of the Reformation.

Of course, in such an inquiry, passing on from century to century, one would be naturally reminded how much in our own History must have passed in the interval; some historical inquirers maintaining, that so great have been the changes effected, that they have swept away almost every principle advanced.

There is not the least intention of discussing here how far this may be true or not, still less of examining in detail the events of "the English Reformation." But it is too great an historical fact for any legal English Churchman to omit, and which would as certainly have come to pass, even if Henry VIII. and his contemporaries had never lived. Such had been the train of circumstances, which, under Providence, history had been gradually evolving!

Granting all this, notwithstanding, if we go back to the previous steps of our inquiry, there is a statement put out, only half-a-century ago, by those who were fully alive to all the effects of the Reformation—and the statement is the more important, because it comes from the Queen's Royal Commissioners upon Ecclesiastical Courts, and because advice is evi-

Royal Commission of 1832.

dently tendered in the honest declaration[m]. "With respect to the Tribunal which we recommend," say they, "we may remark, that it will restore to the Bishops that personal jurisdiction which they originally exercised, and which was afterwards delegated by them to their Chancellors and officials. The doctrine of the Canon Law is, that although the trial of Causes of certain descriptions may be properly entrusted to a Lay Judge, to the Bishop himself belong '*inquisitio*,' '*correctio*,' '*punitio excessuum*,' '*seu amotio a beneficio*.' Agreeably to this principle, the power of 'Deprivation' is reserved by our Canons to the Bishop in person, and the same principle seems to apply to the case of 'Suspension,' and to the infliction of any other censure which may affect a Clergyman's Spiritual functions."

But well-nigh half-a-century has passed over in the annals of the English Church since the above 'Report' was written; and it is not unreasonable to inquire what has been done to carry out the recommendations of the Royal Commissioners?

And one may also ask, Has this period of time been such a season of tranquillity as to lull us into the idea that the Commissioners had no real necessity for recommending such reasonable proposals? Rather, have not the events, in that period of time, been of such a nature, following each other in rapid succession, as to show us that something[n] more is required than abstract knowledge—events which, perhaps, are not likely to bring out less, but more important, issues? *A priori, that* Legislation is always best, if, resting upon precedent and justice, the same is accomplished in a time of calm, rather than

[m] Report of Royal Commission on Eccl. Courts, 1832, p. 57.

[n] Whatever opinions the generality of people may have upon the subject of the well-known legal case, entitled Martin *v.* Mackonochie, few will deny the pertinency of the following remarks of the "Times," March 21, 1879:—

"If the suit of Martin *v.* Mackonochie has done nothing else, it will, at least, have effected a useful object in laying bare an extraordinary state of complication and confusion both in ecclesiastical law, and in the jurisdiction which administers it." Only, what the "Times" has enunciated but lately, has long been fully felt, by many Churchmen, as a sore grievance.

when accompanied by excitement and clamour. Reason is more likely to have a patient hearing, when, instead of being influenced by feeling, it is guided by facts.

It is true that another Royal Commission has been at work, and has now given in its report. But, then, has no time been lost in the interval?

The Statutes of Henry VIII.

It is clearly laid down where the chief earthly authority lies; and every English Clergyman accepts it when he takes his Ordination-vows. It is declared, that no Foreign Potentate, whatsoever, has any jurisdiction in this country. Only, many a Churchman regrets, and reasonably, that to enunciate the plain fact, terms so objectionable are used, that in the legal instruments of Henry VIII. he is made to assume to himself the title of being '*Head of the Church*,'—a fact upon which the Churchman is reproached by the Roman Catholic on the one side, and by the Nonconformist on the other. In a subsequent generation, Queen Elizabeth had the good judgment to repudiate the title for herself. And what is more important, St. Paul has declared who is the 'Head of the Church,'—the same 'Who is the Saviour of the Body,' and who, in His own memorable words, has promised that to His Church *He* is ever present, and will be, till the end cometh!

Moreover, in these very 'Acts' of King Henry we have a very important principle acknowledged, that whilst the Royal prerogative is carefully guarded, in the self-same proposition, in its own place, is another point as carefully guarded, and which point in the wording (accidentally it may be) takes precedence to the other. But it will be better, perhaps, to give the exact wording of the Act:—"Provided also, that such Canons, Constitutions, Ordinances, or Synodals provincial, being already '*made*,' which be not contrariant nor repugnant to the Laws, Statutes, and Customs of this Realm, nor to the damage or hurt of the King's 'Prerogative Royal,' *shall now still be used and executed*[o] as they were *afore* the making of this

[o] 25 Hen. VIII. c. 19; *Gibson's Codex*, p. 985.
The same idea mentioned here occurs in another Act, 25 Hen. VIII. c. 21.

'Act,' till *such time* as they be viewed, searched, or otherwise ordered, and determined, by the said two-and-thirty persons, or the more part of them, according to the tenor, form, and effect of this present 'Act.'" Now what is the meaning of these terms? And what do they really comprehend?

We may premise, If we retain one part of the entire

Mention is made of "the customed and antient Laws of this realm, originally established, as Laws of the same, by the said sufferance, consents, and customs, and none otherwise."

Bp. Stillingfleet has a word upon the principle, making general practice and allowance the main foundation of our Ecclesiastical legal Constitution: "This is," adds he, "when things of themselves do not oblige by the authority of those that made them; yet being generally received and allowed, *they thereby become Law to us.*"—*Gibson's Codex*, note, p. 998.

Hence the conclusion which Bishop Gibson comes to, that the particular 'Act' does not intend to exclude all foreign Canon Law,—only such as be repugnant, contrariant, &c., to the received 'ordinances' and 'constitutions' of the realm.—*Ibid.*

This is made very clear in the Judgment given by Mr. Justice Coleridge in the case of Bp. Hampden in the Queen's Bench:—

"It is well known that that Commission never was effective, and it is upon that footing that what I call (distinguishing it from the general Canon Law) *the National Canon Law* of this country at present stands."—*Report* of said Case, p. 456: publ. 1849.

Compare 25 Hen. VIII. cap. 14, entituled, "An Act for the punishment of Heresy," and the very useful notes on it, *Gibson's Codex*, tit. xli. cap. 1, p. 987, wrongly paged 997.

Upon the important point just referred to, we need go no further than the Stat. 1 Eliz. c. 1, to show, that even in matters of doctrine, the antecedent authority of the Church in her General Councils, &c., is expressly recognised by the Legislature after the Reformation.

"Provided always, and be it enacted by the authority aforesaid, that such person or persons to whom your Highness, your heirs, or successors, shall hereafter by letters patent, under the Great Seal of England, give authority to have or execute any jurisdiction, power, or authority spiritual, or to visit, reform, order, or correct any errors, heresies, schisms, abuses, or enormities, by virtue of this Act, shall not in any wise have authority or power to order, determine, or adjudge any matter or cause to be heresy, but only such as heretofore have been determined, ordered, or adjudged to be heresy, by the authority of the Canonical Scriptures, or by the first four General Councils, or any of them, or by any other General Council wherein the same was declared heresy by the express and plain words of the said Canonical Scriptures, or such as hereafter shall be ordered, judged, or determined to be heresy by the High Court of Parliament of this realm, with the assent of the Clergy in their Convocation; anything in this Act contained to the contrary notwithstanding."—(Copied from *Bp. Hampden's Report*, p. 337.)

paragraph, which Churchmen very loyally wish to do, why is the other retained, *unless* it has some specific meaning? And what were the results of the labours of the thirty-two men alluded to in the said 'Act,' promised, and commissioned, to do their best for the elucidation of these matters? Clearly, the Act does not intend to enforce all the foreign Canonical Law; for this, in its entirety, would at once clash with, and if carried out, subvert the law of the land. And moreover, we have the historical information, that Archbishop Cranmer drew together many citations from the Body of Canon Law, which are printed at large by Bishop Burnet for the purpose of proving, that this Body of foreign Canon Law is inconsistent with the Law of the land, and by consequence requires changing and reforming.

Hence the Act enforced what may be called the *English* Canon Law, comprising some Canons of foreign growth which had been received here, and others authorised by English Synods and accepted here; so far as consistent with the laws of the land, &c. It is plain that it enforced no Canons that were contrary to them.

Details in Church law may be altered; but there are certain principles inherent in the English Church herself, as a Branch of the Universal Church of Christ, which must be guarded in a Christian country, which can be traced to the times of 'Magna Charta,' when the Liberties of the Church of England were thought important enough to be specified in the *first* Article of the Charter. And we may go still further back in our country's history for the same principles, which are held to be constitutionally settled and inviolable, just as certain principles are recognised as "Constitutional" in secular matters. The term 'constitutional' is used advisedly, because it is one very familiar to every British subject, and which has its applicability, whether we speak of secular or spiritual matters. Only, in either, or in both cases, we are *indebted to the Church* for the term, where in her Councils whenever a question being at once debated, carried, and 'to be promulged,' the expression was, '*Constitutum est.*'

The Royal Prerogative.

This brings us very naturally to the topic of the *Royal Prerogative*, which, as it is so important in all secular matters, claims an equal importance in what appertains to the Church. This is not equally true as to all things belonging to the Church, because there are some points which the Church claims to be *her own exclusively*, and this she always has done, notwithstanding any connection that may have developed itself between the State and the Church, as a part of our national organization. This exclusiveness is no unnatural claim; for in one sense it is just what is claimed by other sections of Christians when there is no such connection. Indeed, with some, the jealousy of any external interference becomes so great, that they would reject the very Communion of our Church because of this connection. They would consider it derogatory to the high aim of a Church, and that worldliness would be the result of any such connection. Further, the time has been, when stronger terms than even this have been used, to give an idea of the weight of objection.

It would be out of place to discuss the entire question here[p]; nor is it needful to offer any remark upon the opinion of an eminent Lawyer[q] now gone, who is reported to have said, that the object of the connection is, not to make the Church 'worldly,' but the State *more spiritual*; in other words, to raise the latter to a higher platform of *Christian* thought and *Christian* action!

The Prerogative of the Christian Emperors.

It has been already asserted, that notwithstanding the repugnance which the Early Christian Emperors felt in calling together the Great Councils of the Church, it was done; so that what was felt to be an abnormal policy at first, became soon an established fact[r]. The reasons appear obvious. In the days spoken of, the facilities of communication between different places must have been few; and still greater

[p] The supremacy is separately discussed in the next chapter.

[q] This has been attributed to Lord Eldon.

[r] "Hinc Ecclesia, ab incunabulis ferè, legum suarum exsecutionem imperatoribus commendavit."

was the difficulty, when viewing the places, collectively, in relation to the great centres of political and religious life. The advantages, therefore, which the Secular Authorities offered were readily embraced. As a consequence, a proper deference[s] was paid to the Civil powers, loyalty to the same being one of the settled principles of Christian conduct. Here, moreover, another point was to be guarded against, and which union with the State gave the Church the means of acquiring, viz. to *prevent* the publication of spurious decrees in the place of those which were genuine and stamped with Ecclesiastical Authority. One glance at the enormous amount of "apocryphal" literature current in the early Christian Church will shew the importance of this. And again, as an additional reason, which contributed to the inaugurating of this policy, was the fact, that Christianity, however much, had only *partially* extended itself throughout the vast Roman Empire. Consequently care was the more needful 'ad securitatem populi Christiani[t].' And, besides this, in some

[s] From particular causes, the feeling gradually got beyond this. From the custom of paying honour to the statues of the Emperors came the 'cultus imaginum' into the Eastern Church. The Western, not having had the civil custom, resisted. Vid. *Dollinger, Church Hist.*, vol. iii. p. 55. The Fathers, e.g., St. Jerome, set themselves against the evil custom, as idolatrous, comparing it to that paid to Nebuchadnezzar. Incense was burnt before those of the Emperors; as afterwards before the images of the Saints.

[t] Enough has been said upon this topic in the foregoing remarks, but other reasons can be assigned for the policy in question, viz., that the Church appealed to the State for the preventing or extirpation of heresies: as an example, about A.D. 683, the following letter was transmitted by Leo II. to the then Emperor, expressive of his feelings:—

"Synodali igitur sententiâ, et imperialis edicti censurâ, tanquam ancipiti spiritûs gladio, cum priscis hæresibus etiam novæ pravitatis error expunctus-est."—*Selvagg*, vol. i. p. 135.

And so with regard to other matters, where the above reason had no place, the execution of the decrees rested with the Emperor.

At the same time, we may remark, in connection with this point, bringing before us the two extremes of the members of a Council together, If, at the close of the proceedings, the Presbyters occasionally signed their names, so also did Kings and Emperors, *after the Bishops*.

"Imperatores etiam, ac reges aliquando per semetipsos, sæpiùs per legatos, oratoresque suos conciliis œcumenicis adfuêre; atque adeo, quod ad loci honoratioris dignitatem, præfuêre, iisdemque post Episcopos subscripsêre."

cases those who came to the Councils had the evils of poverty to battle against. Such men, living far away from the place of meeting, and having but small means of their own to help them, in the prosecution of their journeys, received assistance from the State, to enable them to fulfil their special duties[u].

Now whether we speak of this policy as a concession on the one side, or as a claim *de jure*, and *ex necessitate*, on the other, it is abundantly evident, that the highest secular Authorities, Princes, Kings, and Emperors themselves, showed in their demeanour, *externally* (without referring to them as living members of Christ), every mark of respect, even to the buildings where the Christians were wont to worship. Constrained by this, they felt that *here* at least, in being brought nearer to their Maker in worship and adoration, *all were equal.* And, as on such occasions, the world itself seemed to be left behind in this hallowed centre of Christian Unity, they did not enter, without first taking off from their own persons those marks of dignity and splendour, with which their subjects had surrounded the Imperial power. The guards, the crown, and other outward adornments, gave way to the inner consciousness of a sense of the Presence of the Divine Majesty! At all events, the custom existed, and, probably, would not be without its effect upon *some* minds, when the highest dignitaries came to take their place in the Councils of the Church.

[u] We may state, for the first three centuries, that the worldly means of the Church were small.

"E possessionibus Ecclesiæ donatis, quæ licet tribus prioribus sæculis oppido tenues essent; at pace Ecclesiæ redditâ valdè adauctæ-sunt." See *Tertull. Apol.*, cap. 39, and *St. Cyprian*, Ep. 18 and 66.

CHAPTER IX.

THE ROYAL SUPREMACY.

"I anointed thee king over Israel."—2 *Sam.* xii. 7.

IN the preceding pages we have spoken of all authority being in some sense derived from God; and of law, or at least all righteous law, being, to some extent, connected with the Law Divine. And this is no less true, because the administration of it must be by men. The King is said to be God's Minister for that very purpose.

All Jurisdiction is *not* derived from the Crown.

But the question arises, When the law which is administered is for the benefit of man's spiritual condition, that is, when it is spiritual, not secular, by what human intermediate authority is it to be administered? Can we affirm that Secular Law and Ecclesiastical Law rest exactly upon the same footing? In other words, because Secular Law is given and administered by the King, or other Sovereign power of the State, is Ecclesiastical Law and spiritual jurisdiction derived from the Sovereign, and to be administered by him and his officers? It is admitted that the King is God's Minister for Secular Law, is he God's Minister for the Ecclesiastical Law?

It has often been said, even by men of ability and learning and high official position, that all jurisdiction is derived from the Crown; while the familiar formula that the Queen is "over all persons and all causes, Ecclesiastical and Civil, within her dominions supreme," seems to justify the opinion, that the administration of Ecclesiastical Law is, in England, vested in the Crown and its subordinates, and that the jurisdiction of Bishops and Ecclesiastical Courts is derived from that source.

Opinion of Bishop Harvey Goodwin.

The Bishop of Carlisle[a] is reported to have said, that "all Courts of Law existing in this country must have their origin from the Crown."

The proposition as it stands cannot be admitted without qualification[b]. The Crown, no doubt, is

[a] The following quotation with respect to the Bishop of Carlisle and Ecclesiastical Courts, is taken from the "Law Times" of June 11, 1881 :—

"His Lordship is reported to have said in his Diocesan Charge, that the Courts existing in this country *must have their origin* from the Crown, and that, in point of fact, *all real authority*, whether in matters civil, or ecclesiastical, must come from that source." . . . . "We wonder whether the Bishop has any idea of the history of the ancient local Courts. These did not derive their origin from the Crown. They are far older than the kingdom of England. For a considerable period the King's law and the King's Courts contended with the local law and the local Courts, and in the end the King's influence prevailed." (See *Maine's Early History of Institutions*, p. 320.) "The fact is, that a village-community is of much greater antiquity than the kingdom. And this is equally true of the Church. Passing from the question of origin to that of jurisdiction, we find it clearly laid down by Lord Justice James in Niboyet *v.* Niboyet (39 L. T. Rep. N. S. 1; L. Rep. 4, P. Div. 1), that the jurisdiction of the spiritual was not derived from the State. His Lordship said: 'The jurisdiction of the Court Christian was a jurisdiction over Christians, who, in theory, by virtue of their baptism, became members of the Catholic and Apostolic Church.' . . . . 'And although the Laws of the State sometimes interfered by way of coercion, regulation, or prohibition, with the Courts Christian, the latter acted *proprio vigore*, and *they administered their own law*, not the law of the State; and they administered it in their own name, and not in the name of the Sovereign.'

"Can anything be clearer? The Lord Justice is speaking of the transfer of jurisdiction in matrimonial causes from the Church and her Courts to the Sovereign and her Courts" (L. R. 4, P. Div. 5). "He points out that the language of the Act, creating the Divorce Court, strikingly illustrates his view; for it enacts that all jurisdiction in matrimonial causes shall be vested in Her Majesty. His Lordship remarks: 'It was not previously vested in her, although she had held appellate jurisdiction as Supreme Ecclesiastical Judge.' Probably, the Bishop would not have held, that excommunication was a power derived from the Crown. Yet the Ecclesiastical Courts may in certain cases pronounce this sentence. This power is admitted by the learned author of Stephen's 'Commentaries,' to be derived from the Canon Law (vol. i. 51)."

[b] See a very interesting note of *Gibson, Codex*, p. 968, containing the Royal Proclamation of Charles I. :—

This Proclamation declares that the processes of the Ecclesiastical Courts may be issued in the name of the Bishops, and that it is not necessary that they should be issued in the King's name; also, that a Patent under the Great Seal is not necessary to authorize the keeping of Ecclesiastical Courts. This Proclamation declares the Act 1 Edw. VI. c. 2, is no longer in force.

a very large and supreme power in the administration; but, in point of fact, there must be a demurrer to the corollary that follows the said proposition, viz. that *all* authority, whether in matters civil or ecclesiastical, must come from that same source.

Of course, in one sense, as a general proposition, when strict accuracy is not always studied, there may be a semblance of truth in the statement; since the supreme power with us is held to be lodged there, and yet only in part, as the embodiments of other powers, which, collectively, go to make up the authority of the entire Realm.

But then, if we examine the statement, it will scarcely bear the test of accuracy in the details.

For if so, whence arose our ancient Local Courts? These did not derive their origin from the Crown. True, there was a struggle, as history informs us, between the King's Courts and the Local Courts[c], and the former prevailed. But then, because of the historical issue, it does not follow that the local Courts *must have* originated with the Crown.

Old Local Courts did not derive jurisdiction from the Crown.

See also *Phill. Eccl. Law*, p. 41; *Burn* (Phillimore's Edit.), 202; *Steph. Eccl. Stat.* i. 294, note. See also *Stubbs' Appendix I.* to recent *Report on Eccl. Courts*, p. 44. 1 Edw. VI. c. 2 was repealed by 1 Mary, Sess. 2, c. 2, and was only in effect partially revived. It is admitted in the *Report* (p. xxxvi.), that "The authority by which the Eccl. Courts were held was that of the archbishops, bishops, and other ordinaries." This also appears from the form of the *significavit*, by means of which the Church Court obtains the help of the Court of Chancery (now the Chancery Division) to coerce the obstinate. It states that the offender "despises the jurisdiction of the Church." The older phrase was "claves contempnens." See below, p. 227, note, and *Laws Oughton*, 2nd. ed., 135, note.

[c] As a confirmation of the statement about Local Courts, I would quote the following: "So early as the reign of Henry I. the County Court was called *curia regis* (leges Henrici Primi, c. xi.), yet counties existed before the earliest times of the Saxons, and the Courts of the Counties arose before there was any united monarchy, 'Le leete est le plus ancient cour in le realme' (*Year-Book*, 7 Hen. VI. 12). It was as ancient as hundreds, which undoubtedly existed before the time of the Saxons (whose earliest laws speak of them as already existing), so that it was more ancient than the monarchy itself."—*Reeves' History of the English Law*, ed. Finlason, Introd., p. 109.

A well-known Canonist[d], whom I have frequently quoted, puts a part of the question in a very clear light, when discussing the "Jus divinum positivum," in connection with Ecclesiastical Law, specifying the nature of the powers that are given. But then this opinion is that of an Ecclesiastic, and may be suspected as one-sided and prejudiced, and this shall be appended only as a note.

Happily, however, we can fall back on the help of a distinguished Lay Judge, whose death the legal profession and the country have lately deplored. We need not inquire whether he was a Churchman, or otherwise. It is sufficient that he was a great and learned lawyer, whose opinion, therefore, upon such a question must be of the utmost value.

In the case of Niboyet *v.* Niboyet, Lord Justice James said:—

Lord Justice James shows that Ecclesiastical Courts do not derive jurisdiction from the Crown.

"The jurisdiction of the Court Christian is a jurisdiction over Christians, who, in theory, by virtue of their baptism, became members of the One Catholic and Apostolic Church."... "And although the laws of the State sometimes interfered by way of coercion, regulation, and prohibition, with the Courts Christian, the latter acted *proprio vigore*, they administered their own law, not the law of the State, and they administered it in their own name, not in the name of the Sovereign."

We have given prominence to the Judgment of Lord Justice James, as showing that, in the present day, the Judges of the land are beginning (which is a hopeful sign) to see what is the true origin of Ecclesiastical Jurisdiction.

[d] "Demùm quum cujusque populi moribus vel maximè jus civile sit accommodandum; Christiana vero Ecclesia non unam tantùm gentem, ut Synagoga hebraicum populum, sed universas prorsus nationes suo ambitu, erat comprehensura; tum Christus non terrenum et periturum, sed ex terrenis et perituris unum spirituale ac æternum fundaturus regnum venerat, qui Pilato respondit, Regnum meum non est de hoc mundo: St. John xviii. 36, hinc judicialia præcepta, quantum ad res civiles, non dedit, sed ea pro cujusque gentis indole, et moribus, ut ab ipsis divinis moralibus præceptis haud remota, sæculi principibus ferenda reliquit."—*Selvagg.*

The fact is obvious from history, but has become somewhat obscured through a confusion of the two kinds of jurisdiction which co-existed in the Ecclesiastical Courts, the one being purely spiritual, and the other merely over matters in some way connected with the Church, or, from some special cause, adjudicated upon in Church Courts.

Distinction between the "Criminal" and "Civil" jurisdiction of the Church Courts.

Now the first kind of jurisdiction is inherent in the Church. It is exercised mainly (to borrow the old canonical expression) '*pro salute animæ*'—for the soul's health—with a view to the reformation of the sinner[e].

It has also the secondary object of purging the Church, if the sinner is obstinate. It is believed to be derived *from Christ Himself*, and to have been exercised under the authority of St. Paul, at Corinth. It is in Ecclesiastical Law called 'criminal jurisdiction,' as opposed to the other part of ecclesiastical jurisdiction which is called "Civil." The word 'Crime[f]' is, in older English, equivalent to 'sin.'

Nature and origin of the "Civil" jurisdiction of the Church Courts.

The civil jurisdiction, formerly, included probate of wills, and the administration of estates of deceased persons. This was no part of the inherent jurisdiction of the Church, and was taken away by Act of Parliament, and, as the Act itself states, "vested in her Majesty," showing, by its language, that it had not been vested in the Sovereign before. The civil jurisdiction still includes the right of adjudication on faculties for alteration and repair of churches, and certain matters connected with pews, &c. Some of this jurisdiction arose from the very familiar principle of allowing societies to manage their own affairs, and some, from other causes. The jurisdiction of the Church Courts, in matters of a civil

[e] Of course, very often the promoter of the suit had some ulterior object, and cared little enough about the soul of the person whom he brought before the Court.

[f] Thus we read in our Prayer-Book, "If any of you be in malice, envy, or any other grievous *crime*." So Spencer, in the "Faery Queen," speaks of the penitential discipline, which his knight undergoes, as taking his *crime* away.

nature, has become much narrower, in consequence of the extension of the jurisdiction of the Secular Courts and legislative interference.

Thus 'trusts' were enforced by the Church long before the Court of Chancery exercised jurisdiction over them. We have, elsewhere, mentioned that 'specific performance' was derived from the Canon Law. 'Breach of Promise of Marriage' was dealt with in the Church Court before an action could be brought in any Secular Court. Indeed, it seems that sometimes the Court compelled the unwilling suitor to marry. At one time, the Secular Courts would not enforce certain contracts unless under seal. Here the Church stepped in, and said that no such want of formalities justified a Christian in breaking his promise[g]. The Secular Courts, after a time, adopted the more liberal view the Church had taken, and then the Secular Court became the proper forum for these clearly secular suits. It is needless to multiply examples. It is enough to state, that at one time the Church Courts had jurisdiction over a large class of suits, which modern opinion thinks more suitable for the Secular Courts. Also, the claim of the Clergy to be exempt from the Secular Courts, even when they committed crimes, was, obviously, contrary to our ideas of even-handed justice throughout the Nation.

I make these remarks here to show, that no one would, in the least, wish to deprecate the reduction of jurisdiction of the Church Courts in secular matters, which has taken place; whilst it is desirable to make plain how large an area that jurisdiction covered, and what a great share it has had *in shaping English Law.*

The jurisdiction in secular matters being now taken away, there is only left (1) Criminal jurisdiction derived from Christ, and (2) Civil jurisdiction over the Church's own affairs, somewhat analogous to that exercised by

[g] See Pollock on *Contracts*, pp. 140, 122, note. Probably the ground of jurisdiction was '*pro salute animæ.*'

Clubs[h], and other lawful societies. Neither class is derived from, or vested in, the Crown[i].

Meaning of expression, "Over all persons and in all causes supreme."

It will be necessary, now, to explain the meaning of the phrase "over all persons and all causes, both Ecclesiastical and Civil, within these dominions supreme[k]."

The first part of the phrase enunciates the simple fact, that the Clergy, like all other citizens, are amenable to the Law, if they commit ordinary crimes, and can be impleaded in the Queen's Courts. The last is explained readily enough, if it is once understood, that a supremacy over all causes does not include "the power of the Keys;" for the Criminal jurisdiction, for the 'soul's health,' involves that power. The Criminal jurisdiction includes the power to 'excommunicate' and give 'penance[l],' and this can only be done by virtue of "the Keys of the Kingdom of Heaven,"—given by Christ to His Apostles.

The Power of the Keys.

The statement that the Crown has not the power of the Keys would seem to require no demonstration, and to be obvious to all who understand

[h] Some societies, as Building Friendly Societies, &c., are under special Statutes. We refer to such ordinary social clubs as have rules vesting the decision of their disputes, and power to suspend members, absolutely, in their own body, whether in General Meeting, or in a Committee. In such a case the Law Courts will only interfere when the Club has not followed its own rules as to calling together the persons who are to decide the question, &c., *or* in the event of a gross perversion of natural justice, as if the Committee or Club refuse to hear the person accused, or take bribes.

[i] By a Statute of Hen. VIII., there was a right to *appeal* to the Crown for "lack of justice." Hence arose the Delegates and the Judicial Committee.

[k] See also p. 234, below.

[l] It is not intended here to deny or complain of the authority of the Crown by *Prohibition* when the Church Court exceeds its powers. See p. 233.

"Excommunication" and "Penance" are still recognised in our Ecclesiastical Law, though the public penance in the white sheet, &c., is happily gone for ever; but the principle is still recognised, and this is all that is contended for. "The Ecclesiastical Court may, in certain cases, pronounce sentence of excommunication, a power derived from the Canon Law, and still exerciseable under proper restrictions as defined by Statute."—*Steph. Comm.*, Edit. 1880, vol. i. pp. 50, 51. See 53 Geo. III. c. 127, s. 2, and L. R. 7 P. Div. 101.

what excommunication, if rightly awarded by the Church, really is. Christ gave the Keys to the Apostles[m], which same Keys were handed down through successive ages, and, when union of Church and State first took place under Constantine, were never transferred to the State. No one supposes, that in pre-reformation times they belonged to the State, the only doubt that can be raised being founded on the Royal Supremacy, and statutes in connection therewith.

Catechism of Edward VI.

But then, we shall presently show, from definite legal authorities, that that Supremacy does not include 'power of the Keys.' E.g. cf. the Catechism set forth under the authority of Edw. VI. in 1553[n], when the Protestantism of the English Church is supposed to have been at its strongest. The Catechism is treating of the "notes," or "marks," of the Church, and we shall quote it *verbatim*:—

"Laste of all brotherlye correction and excommunication, or banishyng those out of the Church, that wylle not amend their lives. This marcke the holy fathers termed discipline. . . . This is that same Churche, which Paul calleth the piller and upholding stay of truth. To this Church belong the Keies wherewyth heaven is locked and unlocked; for that is done by the ministration of the worde; whereunto properly appertayneth the power to bynde and loose; to hold for gylty, and forgive synnes."—Catech. of K. Edw. VI.—*Enchirid. Theol.*, 3rd edit., p. 26.

[m] See Bp. Pearson on the "Apostles' Creed;" also, Bp. Harold Browne on the "XXXIX. Articles." Church Censures are annexed to the Keys. *Selvagg.* ii. 180. The Power of the Keys is recognised by the law of the land. See *Fitzherbert*, *Nat. Brev.*, 7th ed., 145. This was published long after the Reformation, and uses the phrase "claves contempnentes." See above, p. 222, note.

[n] Compare also the opinion of Bishop Andrewes, who was selected by James I. to defend the Royal Supremacy against Bellarmine. He says of the Sovereign, "Docendi munus, vel dubia legis explicandi, non assumit, vel conciones habendi, vel rei sacræ præeundi, vel sacramenta celebrandi; non vel clavium jus vel censuræ," etc. *Tortura Torti*, p. 380. It is cited and adopted by Bishop Harold Browne ("XXXIX. Articles," 8th ed., p. 800). But does not the Privy Council now take upon itself to explain doubtful matters of law?

This affords an explanation of the phrase "ministering of God's word," which the XXXVIIth Article states correctly: "We give not to our princes," &c.

"Reformatio Legum."

II. Our next authority is the '*Reformatio Legum*,' which was written with the object of revising the old, and providing a new, Canon Law for the Reformed Church, and of superseding the old Canon Law. It declares that the Crown is supreme over all persons, and in all causes; and yet in another passage expressly speaks of the 'Claves Christi'—'the keys'—being in the hands of the Bishops and Archbishops.

"Ecclesiæ claves accepit a Christo, quibus ligandi potestas et solvendi continetur. Quoniam autem ad hæc rectè debet et ordine procedi, quemadmodum administratio sacramentorum et ex Sacris Scripturis concionandi munus, certis viris deferuntur, ita potestas excommunicationis in ministris et gubernatoribus ecclesiarum consedit, ut illi sacrarum scripturarum sententia et regula disciplinam in sacrosancta Domini cœna sanciant, et dijudicent quæ personæ mensâ pellendæ divinâ, quæ sint ad eam assumendæ. Nominatim verò moderatores et ecclesiarum duces sunt Archiepiscopi, Episcopi, Archidiaconi, Decani, denique quicunque sunt ab Ecclesia ad hoc munus adhibiti."—(*De Excomm.* c. 2.)

Declaration of Queen Elizabeth.

III. Our next authority shall be the declaration[o] of Queen Elizabeth herself:—

"And further, Her Majesty forbiddeth all manner her subjects to give ear, or credit, to such perverse and malicious persons, which most sinisterly and maliciously labour to notify to her loving subjects, how by words of the said oath[p], it may be collected, that the kings or queens of this realm, possessors of the Crown, may challenge authority and power of ministery of Divine Service in the Church, wherein her said subjects be much abused by such evil-disposed persons. For, certainly, her Majesty neither doth, nor ever will, challenge any authority, other than that was challenged, and lately used, by the said noble Kings of famous memory, Henry VIII. and King

[o] Compare also the Proclamation of Charles I. in *Gibson's Codex*, p. 968; and see note above in the present chapter, p. 221.

[p] That is, the Oath of Supremacy.

Edward VI., which is, and was, of ancient time, due to the imperial Crown of this Realm, that is, under God, to have the sovereignty and rule over all manner of persons born within these realms, dominions, and countries, of what estate, either ecclesiastical or temporal, soever they be, so as no other foreign power shall, or ought to, have any superiority over them." (*Stephen's Stat.*, vol. i. p. 406 [q].)

Declaration of Denman, L. C. J., that Crown has not the "power of the Keys."

IV. The following concluding, and conclusive, paragraph may be quoted from the Judgment of the Lord Chief Justice Denman in Bp. Hampden's Case, Report, p. 491. He is speaking of the XXXVIIth Article of the Church of England :—

"The whole of this Article must be taken together. There is no 'power of the Keys[r],' none to ordain, or to absolve—but there is a power over all states and degrees committed to their charge by God, whether they be ecclesiastical or temporal."

The Established Church of Scotland on Church Authority.

We append the following citations from the Doctrinal Standard of the Scotch Established Church as showing, at least, there is nothing in the principle contended for, subversive of Union between Church and State :—

Chap. XXX. Of Church Censures.

"I. The Lord Jesus, as King and Head of His Church, hath therein appointed a government in the hand of Church-officers, distinct from the Civil Magistrate.

"II. To these officers the Keys of the Kingdom of Heaven are committed, by virtue whereof they have power, respectively, to retain and remit sins, to shut the kingdom of heaven against the impenitent, both by the word and censures, and to open it unto penitent sinners by the ministry of the Gospel, and by absolution from censures, as occasion shall require.

[q] The full text of this will also be found at p. 75 of the *Report*. It should be compared with the statements made by Henry VIII. as to the meaning of his supremacy (*Report*, p. 35). As to Court of High Commission and supremacy of Elizabeth, see p. 231, below.

[r] The learned Judge states explicitly, that the doctrine is clearly laid down in Article XXXVII., that the Sovereign has not the power of the Keys, and cannot confer orders. *Report of Hampden Case*, p 491.

"III. Church censures are necessary for the reclaiming and gaining of offending brethren, for the deterring of others from the like offences, for purging out of that leaven which might infect the whole lot, for vindicating the honour of Christ, and the holy profession of the Gospel, and for preventing the wrath of God, which might justly fall upon the Church, if they should suffer His Covenant, and the seals thereof, to be profaned by notorious and obstinate offenders.

"IV. For the better attaining of these ends, the officers of the Church are to proceed by admonition, suspension from the sacrament of the Lord's Supper for a season, and by excommunication from the Church, according to the nature of the crime, and demerit of the person." (Westminster Confession[s].)

So also in the Scotch Catechism:—

"Christ executeth the office of a King, in calling out of the world a people to Himself, and giving them officers, laws, and censures, by which He visibly governs them, in bestowing saving grace upon His elect, rewarding their obedience, and correcting them for their sins." (The Larger Catechism, Answer 45.)

We have shown that the purely spiritual jurisdiction is not derived from, or vested in, the Crown; but it will be needful to add a few words with regard to its appellate jurisdiction. It is quite clear, that the Crown has not "the power of the Keys;" but the question still remains, how far was it intended at the Reformation to give it the power to hear appeals from the Church Courts, in purely spiritual things?

Court of High Commission, and Lord Coke's explanations.

On the accession of Elizabeth, the extreme claims of the Crown over the Church were somewhat diminished, and the title "Supreme Head[t]" or "Supreme Head on Earth" was exchanged for the more suitable one of "Supreme Governour;" and the Church Courts were allowed to issue legal process in their own names[u].

[s] This was approved by the General Assembly of the Scotch Church in 1647, and ratified by Acts of Parliament (Scotch) in 1649 and 1690.

[t] See *Report*, pp. xxxiv.—xxxvi.

[u] See p. 214, above.

It is quite true that 1 Eliz. c. i. s. 17, Ecclesiastical Jurisdiction was annexed to the Crown in very wide words, and by s. 18, the Crown was empowered to appoint Commissioners to exercise it. Yet Lord Coke says this is limited in three ways:—

(1.) It only restores to the Crown its ancient Jurisdiction [v].

(2.) That the Commissioners cannot excommunicate unless they be spiritual men, and this was not because of any defect in the Statute, but because of the want of competency of the persons [w].

(3.) It only applied to cases of great importance; else it would be grievous to the subject as dragging him from his own diocese, and would be prejudicial to the Bishop's jurisdiction.

Lord Coke says, that the general words must have a limited construction [x].

The above is quoted, partly, to show that even where a Statute professed to give power in the widest general words, Lord Coke held that the powers were limited by the *incompetence* of laymen, who derived jurisdiction only from the Crown and Parliament [y] to exercise certain spiritual powers, and, partly, to show that the *avowed* object of the Reformation-Statutes was to recall from the Pope the authority he had acquired, and to re-annex to the Crown its own "ancient jurisdiction [z]," not to invent a new kind of supremacy.

It is not needful to dwell longer on the Court of High Commission, as it occasioned much disputing, and many inconveniences, both to Church and State, and was finally

[v] 4 Co. Inst., 325, 326. As to what is the ancient jurisdiction, see *Godolphin*, p. 4. Canon I. of 1603 also says the laws were for restoring ancient jurisdiction and abolishing foreign power.

[w] 4 Co. Inst., 327, 337.

[x] 4 Co. Inst., 330—334.

[y] The case of lay Ecclesiastical judges like Sir G. Lee and Sir R. Phillimore, who derived jurisdiction from the Church, is different.

[z] Probably, in fact, these Statutes did give more than the ancient jurisdiction to the Crown; but they did not give it all the powers of the Pope.

abolished by the Long Parliament by 16 Car. I., and its abolition confirmed by 13 Car. II.[a]

Moreover, it was never a Court of Appeal from the Church Courts.

The Appellate powers of the Court of Delegates.

The Supreme Tribunal of Appeal in Ecclesiastical Causes, from the year 1559 to 1832, was that created by 25 Hen. VIII. c. 19, which gave an Appeal from the Church Courts to the King in Chancery for *lack of justice*. The King exercised his power by means of "Delegates;" and thus the Court of Appeal was called the Court of Delegates[b].

But there is no evidence to show that, before the Reformation, there was any appeal to the Pope in suits for 'correction,' on points of doctrine, or ritual; or that in the reign of Henry VIII. and Elizabeth, it was ever intended to create any new rights of Appeal in such cases, or to give any right of Appeal to the Delegates in them. Canon Stubbs says in his First Appendix to the Report, after a very able summary of the history of the Court of Delegates,—

> "It does not therefore appear that any sufficient ground is established for regarding the Court of Delegates as a Constitutional Court of Appeal on questions of Doctrine[c]."

We may add to the above statement, that there is some reason to suppose that the Appeal given for "lack of justice" was not intended to be a regular re-hearing, but that merely, if some actual injustice had been done in the Church Courts, a remedy might be sought for at the hands of the Crown. Such injustice would be done if the Church Court refused to hear the case on the ground that it had no jurisdiction; or, on the other hand, attempted to exercise jurisdiction where it had none; or if it exceeded its powers by giving an excessive sen-

[a] Blackstone speaks strongly against this Court, and says the attempt made to revive it in the reign of James II. served only to hasten his ruin (iii. p. 68).

[b] This was repealed in Mary's reign, and afterwards revived. See *Report*, p. xl.

[c] See *Report*, App., p. 51.

tence, or committed errors in procedure, or acted contrary to law. If this were so, the Appeal to the Crown resembled, in some respects, the French *Appel Comme d'Abus*[d]: and the objects of such an appeal would now be best attained by defining and extending the powers of the High Court of Justice, with respect to 'Prohibition,' and the *significavit*, &c.

It is also not quite clear, whether it was intended in *any* suits for "correction" to give an Appeal to the Crown. The analogy of English Secular Procedure in Secular Cases would tend to show that Appeals were not intended. Also trials for heresy were summary; and there was no appeal in them either to King or Pope, or from lower Court to higher[e].

The Court of Delegates continued until, by 2 & 3 Will. IV. c. 92, and 3 & 4 Will. IV. c. 41, its functions were transferred to the Judicial Committee of the Privy Council. As the Report of the Royal Commission proposes to relieve this Body of its jurisdiction in Ecclesiastical Matters, and also advises the repeal of the 'Public Worship Regulation Act[f],' it will not be needful for us to inquire into the powers exercised by the Judicial Committee, or Lord Penzance. And in the above statement of Law, we have not thought it necessary to investigate the confusions created by them.

What may be admitted with respect to the Royal Supremacy.

Nothing in the above is intended, in any way, as a complaint against the powers of the Crown Court with regard to prohibition, &c., issued to prevent the Church Courts over-stepping the limits of their jurisdiction. And it may be mentioned, too, that in some senses the Church Courts

[d] See *Report*, p. x. note, and *Dean Church's Appendix*, p. 170.

[e] *Stubbs' App.*, No. II., *Rep.*, p. 52.

[f] I add the following remarks of the Bp. of Worcester (Dr. Philpot) with respect to that Statute. He expressed his opinion that "it was unfortunate in its inception, hastily and badly drafted, passed in a panic, and had led to painful results. He believed that anxiety and worry, caused by that Act, had shortened the life of the late Archbishop of Canterbury, who had being doing what he could to *undo* the mischief of that Act."—*Correspondence of the Bp. of Worcester with the Churchwardens of Holy Trinity, Bordesley*, 1883.

are likewise the King's Courts. They are under his protection, the judges are his subjects, they administer the King's Ecclesiastical Law as well as the ancient Canon Law[g]. Besides being liable to prohibition, they also have the right to ask the Secular Courts for assistance, when their own coercive powers of excommunication, and other suspensions of Church privileges, fail.

The Supremacy of the Crown does not necessarily involve an Appeal to the Crown in every dispute which may arise, or crime which may be committed. In the reign of James I., when the Canons of 1603 received the Royal Assent, there was not an "Appeal" in every case from the Local Secular Courts to the Crown. And at the present time, there is no Appeal in cases, involving doctrine, from the Courts of the Scotch Kirk to the Crown[h]; yet Her Majesty is Queen of Scotland as well as of England. And every day disputes are settled by arbitration; yet there is no appeal, in general, from the arbitrator. But the Crown is still *Supreme*[i].

[g] The distinction between these two kinds of law is recognised in the *Report*, p. xxxvi. In the Gallican Church the King, as *Defender of the Canons*, watched over Ecclesiastical discipline, repressed heresy, made regulations for Church Order. *Dean Church's Appendix to Report*, p. 171.

[h] *Report*, p. ix. The judgments of the Established Scotch Church Courts can be enforced by application to the Civil Court, which would, as a matter of course, give effect to them.

[i] We add a short note with regard to the Local Courts. The County Palatine of Durham was vested in the Bishop of Durham till the year 1836, when, by 6 & 7 Will. IV. c. 19, the Palatine jurisdiction of the Bishop was transferred to the Crown. Durham is said to have been a County Palatine before the Conquest (*Criminal Law*, by Mr. Justice Stephen, vol. i. pp. 132, 133). The original powers of the Bishop had been much reduced by 27 Hen. VIII. c. 24 (A.D. 1535).

A large number of Unreformed Corporations also possessed Courts; most of these are being abolished by the Municipal Corporations Act, 1883, though some will be left. These Courts existed by charter, grant, or *prescription* (46 & 47 Vict. c. 18, s. 2).

We may also refer to the ancient Courts of the City of London (4 Co. Inst., c. 50), and especially to the "Court of Equity before the Lord Mayor, commonly called the Court of Conscience," which existed by *prescription* (4 Co. Inst., p. 248; *ibid.*, see also pp. 87, 213, 215).

The jurisdiction of the Manorial Courts is not even now vested in the Crown, and they were still active in 1603, though their powers had been

much reduced. Many of the Courts Leet "are still in existence, and their proceedings, perhaps, give a better notion of the ancient criminal procedure than is to be got from books" (*Steph. Crim. Law*, i. 82). As to the present position and powers of the Courts Baron and Leet, see *Scriven on Copyholds*, 6th ed., 1880, pp. 3, 4, 339—361. By prescription a Court Baron might have jurisdiction as a Court Peculiar, to grant probate and administration and take cognizance of testamentary causes (*ib.* 340). "The lord of the Manor is Chancellor in his own Court, and may administer equity" (*ib.* 341). A Court Leet had, and perhaps in some cases still has, criminal jurisdiction (*ib.* 351; *Williams on Commons*, ed. 1880, p. 273).

In most instances there was no regular "appeal" from these Courts to the Crown, though the Crown had very large powers of supervision, and by means of *certiorari*, and other writs, often removed proceedings from them.

For an interesting sketch of the relation of the King to the popular Courts, see *Maine's Early Law*, p. 160. Not only the general public, but the Church also, is indebted to Sir H. Maine and Mr. Justice Stephen for many historical facts which had been ignored or forgotten, but which are likely to be of the greatest use in the consideration of controversial topics in the future.

CHAPTER X.

THE REPORT OF THE ROYAL COMMISSION ON THE ECCLESIASTICAL COURTS.

"Now therefore . . . be ye zealous for the Law."—1 *Maccab.* ii. 50.

THIS Chapter in its subject-matter is the natural sequence of what has been advanced in some preceding remarks. At the same time, the main part of our inquiry can be brought into a narrower compass, the question being, what is, or what is not, the reasonable interpretation of certain Parliamentary enactments, the definition of a 'Statute' being the Law as expressed by the co-ordinate voice of the Legislature.

Newman's argument that the Church of England has lost its spiritual powers by Disuser.

And yet, according to some, what may be the interpretation is not the only point to be considered, before we can reach the conclusion. "Moralists lay down," says a great English writer[a], "that a law loses its authority which the lawgiver knowingly allows to be infringed and put aside." Or in other words, that a Law, which has been allowed to fall into desuetude, loses its very power of being acknowledged as law.

Admitting, for a moment, this *dictum*[b], it is very plain what the issue would be to a mind so keenly sensitive, so well adapted for taking a part upon any great controversial topic. One may lament the conclusions the

[a] Cardinal Newman on "Anglican Difficulties," Lect. I., p. 17. The Lectures were written after his Eminence left the Anglican Communion. I have not quoted them in the way of approval, but to show how, as a Church, we are viewed from another side.

[b] Perhaps I ought to add that it is not correct with respect to English Statute Law, but it is true to a certain extent with regard to Canon Law, Bye-Laws, &c. And even with regard to Statute Law, and documents of every description, user has considerable weight in the interpretation. See p. 240, below.

writer arrives at, and still more the language in which he expresses his ardent feelings; as though all past efforts, and all the learning which for years of thought and study he had been accumulating, had been suddenly crushed, although he had first dispensed the fruits thereof, publicly and privately, in the pulpit and from the study, for the purpose of arousing Churchmen to strengthen their present position, by a recovery of some of the past.

He thought a great crisis had arisen, and he had the courage, with all the qualifications of an able controversialist, to put himself in the forefront of the encounter!

The only point, perhaps, wherein he was deficient, was, that he had not calculated sufficiently, how, after all, the issue might be different from what he expected, and that, in the course of God's dealings with the world, it might be, the time was not yet come when the liberty he longed for, in the Church, should be hers.

In no other way can we account for such language as the following, with reference to a certain legal case that had been tried in one of H.M.'s Courts. "The question was not," says he, "whether it was true or not, as they" (the Judges) "justly remarked, whether from Heaven or from Hell—they were too sober to meddle with what they had no means of determining"—"they abstained from expressing any opinion of their own upon the theological correctness, or error, of the doctrine propounded." "The question is not," he repeats, "what God has said, but what the English nation had willed and allowed [c]."

Newman on the Gorham Case.

In other words, public opinion judged, as it ever does, by such broad and significant indications of right and wrong, that the judgment was pronounced, not really on its merits, but, in popular language, 'according *to the spirit of the times*.'

Only Dr. Newman adds, as if regretting the misspent time in the acquisition of English Theological Know-

[c] *Anglican Difficulties*, p. 21.

ledge: "Hooker, Taylor, Bull, Pearson, Barrow, and Tillotson, are broken and wrecked before a nation's will[d]."

What! Is it, that one single legal decision, one failure of preconceived expectations, is enough to shatter—in short, to revolutionize—the convictions of years? Doubtless, he must suddenly have recalled the past, and realized to himself *how soon* such a question *might have been met*, when the Church, *per se*, by her own ecclesiastical law, *could have* settled the point, not, by *eschewing the difficulty*, but by discussion in Council assembled, in the examination of her own records, together with an appeal to the Sacred Scriptures of Revelation!

Again, in the Church Movement, in 1839, Dr. Newman adds, "The idea or first principle was, ecclesiastical liberty." The alternative it opposed was, in ecclesiastical language, "the heresy of Erastus[e]."

Once more, as if the mind could scarcely dream of the possibility of any change for the future, "The sole ambition of the Establishment was, to be the creature of the State,"—"the sole aspiration of the movement (i.e. the Tractarian movement) was, *to force* the Church to act for itself[f]."

Some of the statements with respect to the Church of England made by Dr. Newman are partially refuted by the Report.

Now, in quoting the above, there is no need to express any opinion, unless it be, that the present drawing up and publication of the 'Report' made by H. M.'s Commissioners of Inquiry, may be viewed as a *refutation* of a portion of the sentiments advanced. At all events, the Church owes a debt of gratitude to them for all their labours in the work accomplished. They may be said to have been among the first, if not the very first, to have broken up the ground, which may eventually become productive of much advantage to the

[d] *Anglican Difficulties*, p. 23.

[e] Dr. Newman speaks of the Establishment being in its essence Erastian, &c., &c., and the Oxford Movement as opposing this, but opposing it in vain. He also says (p. 94) of the Movement "that it and its idea cannot live, cannot energize in the National Church." (*Newman*, p. 85.) Surely experience is teaching us otherwise.

[f] *Newman's Anglican Difficulties*, p. 89.

English Church. Still, the aforesaid are the published opinions of a thoughtful, learned, and honest man—a man, in fact, whose name will go down to posterity as being, in his earlier life, one of the most distinguished sons of the Church of England. Whilst with us, he did his best to quicken the energies of the Church, reminding her of her duties as well as her privileges; and yet we cannot but lament that, after having assumed the championship of her liberties, and being endowed with a mind so singularly gifted for grappling with all the complications of Ecclesiastical Law, he had not remained to give her the benefit of his acuteness, earnestness, and comprehensive learning[g]!

Modification of Detail not a destruction of Principle.

But to revert to our first point. There is some truth, no doubt, in what Moralists have advanced, viz. that Law, when suffered to lie dormant, or seldom appealed to, will, in course of time, become modified in its force. Men begin to see with different eyes from their predecessors; so that, without speaking of 'the national will' at all, the very terms of a categorical proposition may become subjected to gradual change.

Now this may be perfectly true; and yet we are not forced to accept the conclusions of the various statements that have been made by Cardinal Newman. One would rather attribute the results upon his own mind to other causes which had been at work, possibly, for some time, although he might be almost unconscious of their existence.

But again, if admitting the above, in a qualified form, there still remains the broad fact, that to modify does not necessarily carry along with it implicit destruction, any more than a reformation implies all traces of the old lines being removed, when submitted to an after-investigation.

For instance, whether we speak of law, or religion, or even of matters connected with secular Science, there must be *certain fixed principles* as the foundation upon which subsequent ideas are based,—principles ever existing, al-

[g] *Anglican Difficulties*, p. 89, Lect. IV.

ways received, whatever be the source to which we trace the original germs. No time can alter, and no changes of human opinion can weaken, or destroy them.

Nay, to descend to a lower level of ideas, touching what is simply of human origin, it is an axiom laid down by no less a person than Mr. Justice Patteson[h], that "no usage can control the unambiguous language of the law, no disuse can render it obsolete." And again by the same, "The disuse of an authority or power, which any court by law has, will not destroy that authority or power."

But, *à fortiori*, the point contended for must be true, when matters connected with our common Christianity are concerned[i].

Principle that the Church is a Divine Institution not sufficiently recognised in the Report.

And all this makes it the more extraordinary that the 'Report,' which Her Majesty's Commissioners have lately issued to the world, should ignore the great and fundamental principles upon which such a 'Report' should take its stand. At least, the question may be fairly asked, Is the Church, on behalf of which the 'Report' proposes legislation, of mere human origin? or, as I have throughout ventured to contend, Is not the Church *divine* as well as human[k]? The 'Report' is, simply, silent, enunciating neither the one proposition, nor the other.

But again, is the omission purely accidental, or intentional? One would fain hope the former is the truth,

[h] Judgment in Bp. Hampden's Case, *Report*, p. 476. See also the case of *Ashford v. Thornton*, 1 B. & A., 405.

[i] If not, not only must that long catalogue of eminent and intellectual men alluded to by Dr. Newman be for ever silenced, but all that galaxy of noble minds—Theologians and Legalists—who have been raised up, from generation to generation, to give light to the world, to help forward the progress of civilization, and to instil the principles of Equity and Mercy into our own constitutional laws!

[k] The Report *does* recognise the Church as a spiritual society (p. xiv.), and the existence of Ecclesiastical law, "independent of and anterior to" the secular law, but it nowhere distinctly states that the Church has a *divine* foundation. Canon Stubbs's "Historical Sketch," which is appended to the Report (see p. 22), is much more satisfactory than the Report itself.

when we see so many names of good men authoritatively co-operating in the work, and who, on behalf of Christ's Church, whether Lay or Clerical, will always have courage enough to maintain their opinions, in a secularizing and unbelieving age! Elsewhere, it is easy enough to see, that loyalty to politics is often preferred to faithfulness in religion—the latter not influencing, but made subservient to, the former.

But then, when a body of English Churchmen, with a weight of theological and legal knowledge, has to '*report*,' and wishes to get embodied as law, reforms which are looked upon as the just payment, wholly or in part, of a long-promised debt[1], it is to be regretted that something more definite should not be found than what rests upon *silence*, or mere *expediency!*

Still, if the omission is accidental, this may be considered of minor consequence, in the practical results.

Difficulties to be surmounted before legislation on the basis of the Report can take place.

A more serious impediment to legislation on the basis of the 'Report' will be found in opinions expressed by members of the (so called) 'Liberation Society,' whose avowed object is disestablishment, if not absolute disendowment. The Commissioners' 'Report' has evidently gained the attention of the members; and at one of the Society's public meetings in London[m], an opinion was expressed *adverse* to the 'Report;' that, such were the numerous and important measures that would be submitted to Parliament in the ensuing Session, there could not, possibly, be found any opportunity for considering such details as the said 'Report' would involve.

The next opinion is still more decided. The resolution was moved by the Rev. T. J. Horton, Bradford: "That this Conference is of opinion, that the recommendations of the Royal Commission appointed to inquire into the

[1] The revision of the Canon Law, promised in the reign of Henry VIII., would, no doubt, have included a regular scheme for systematizing the Courts, and reforming their practice. The *Reformatio Legum* did comprise some such provisions. See *Report*, p. xxxiii.

[m] *Times*, Nov. 30, 1883.

working of the Ecclesiastical Courts are objectionable in principle, and will fail to effect their intended purpose; and the Conference protests against the waste of time in Parliament in vain attempts to cure evils which are inseparable from national establishments of religion, as well as against the concession to the Church of England of rights and liberties to which it is not entitled." May I inquire, What is the 'concession' which is sought? In the first instance, it is merely that which is acknowledged as belonging to every individual in the British Empire, the *right*, in the event of a supposed hardship or public wrong, of petitioning the Legislature, and to ask for a consideration of the case.

But if true of individuals, it cannot be less true of the *many*, in their collective and corporate capacity. And if true in regard to a Secular body, why should it be untrue with the Ecclesiastical?

But then, various and important measures, we are told, are likely to engage the attention of Parliament, to the exclusion of such questions as the 'Report' would raise.

Now these may be divided into two classes, foreign and domestic. The first may be grave enough, and, perhaps, are likely to be so. But if the latter, they must be such as will affect our social and moral condition as a people. And has the Church no concern with any of these? If heretofore, in this direction, the Church has not been wanting[n], so far as she was able, then, as a matter of

[n] On the drink question, the Church has constantly protested, through the clergy especially, against the secular legislation of the time. Half a century ago, the attention of the country was drawn to the state of the liquor laws, as rapidly demoralising the masses of our populations in town and 'country.' As a boon, forsooth, and to remedy the evils complained of, the beer bill was given after much opposition; which opposition was just and right, since all the grave consequences predicted have literally come to pass. See Appendix B.

Then, upon another social question, the parochial clergy have offered many a protest, viz. with reference to the evil which is now staring us in the face, through the unwholesome and crowded dwellings of the poor, in town and country, as alike injurious to health and demoralising to their minds. Some fifteen or twenty years ago, the question began to take shape, but soon slept again, not, however, without some of the clergy making a fresh attempt at

Equity which she has infused into our own laws, ought her efforts to be reciprocated, when she, in turn, requests that what immediately concerns herself, should be considered, and advised upon? If, however, the opinion of one member of the House of Commons is to be considered final, this will be denied her, when in seconding the aforesaid Resolutions of the 'Liberation Society,' the objector adds, that "the recommendations of the Commissioners have not a ghost of a chance of being approved by the House of Commons."

Of course, a reply suggests itself: this is only the opinion of *one* out of 650 members.

But, then, if the opinion is the echo of what is, really, the feeling of a considerable section of this branch of the Legislature, the assertion becomes serious, and only shows, in our own day, what an influence mere political feeling can gain over some minds, to the exclusion of candour and equity, and through which even the voice of reason may be stifled. But here again the solution is easy, since the difficulty may be obviated by the Church making her first approach to the Legislature through the '*House of Lords*.' Still, will this avail for the final issue? Will it follow, that what is accepted by one Branch of the Legislature will afterwards be accepted by the other? In another form the proposition may be true; if admitted by the Commons, then an application is more open to the Lords.

But if, once more, we refer to the usual sources of public intelligence, and test the utterances of public men, it would seem, that the 'House of Lords[o]' will not be

reform, but with no results. It has happened, before now, that after a close inspection of everything that called loudly for improvement, the Report was simply deposited in a waste-paper basket!

[o] "An hereditary house of legislation in the nineteenth century is logically indefensible. Aristocracy may once have meant the supremacy of the best and the bravest. It certainly does not do so now." . . . "Practically, the House of Commons is now supreme."

"The Lords may delay, but they dare not defeat, a measure demanded by it. They may be willing to wound, but they are afraid to strike." —Mr. Cowen, M.P., Newcastle-on-Tyne, *Times* report, Dec. 24, 1883.

considered, after so many centuries of existence, *more sacred* than the Church, and that their efforts will have to be employed, not in legislating for the Church, but in protecting themselves. '*After so many centuries*' I have said, with reference to the 'Upper House.'

The Spiritual objects of the Church insufficiently dwelt upon in the Report.

But the Commissioners say *more* on behalf of the Church; and Churchmen have to thank them for their published confirmation of a truth which the public have often failed to realise, viz. that long before Secular Law had rooted itself in modern States, *Ecclesiastical Law existed*[p], to protect the weak, and restrain the strong. There is only one step higher H. M.'s Commissioners could go, and which I now venture, again, to supplement which is, the Law Ecclesiastical was there to teach our ancestors that there is a world beyond the present one, in the certain assurance of another[q]! Why the last fact should not be embodied, it is difficult to explain.

The statement might be of value; since the various topics, embodied in the 'Report,' are to be submitted to the consideration, not of heathen, but of Christian men, and many, too, who profess to have Christ's kingdom at heart!

After these general remarks upon the entire subject we shall conclude this chapter, by giving a short sketch of the Court of Final Appeal, proposed by the Royal Commission, and of certain grave objections to such Court.

[p] Report of Ecclesiastical Commissioners, p. xvi. :—

"It is sufficient to note that, in the historical growth of ecclesiastical judicature in national churches, three particulars are involved: 1. The existence of an ecclesiastical law independent of, and, in modern states, anterior to, the national secular law," &c. See Report for remainder.

[q] The *Report* does not sufficiently indicate the fact that the object of Church Courts is (or should be) not merely the removal or punishment of persons who have misconducted themselves, but the reform of the sinners. The well-known phrase '*pro salute animæ*' seems to have been almost shelved, or, at all events, its real meaning has been forgotten. This would not have been the case, had the Commissioners commenced their 'Report' by a reference to the words of Christ and His Apostles as to Church Discipline, and traced its history down from its Divine origin.

Recommendations of the Commission.

The Recommendations of the Commissioners are quoted under three heads: (I.) Procedure in cases of misconduct and neglect of duty; (II.) Procedure in cases of heresy and breach of Ritual; (III.) General and Miscellaneous[r].

[r] It will not be possible for us to discuss the scheme of Inferior Courts proposed by the Report, or the details of the proposed procedure; it will suffice to say, generally, that many considerable improvements are suggested.

There is, however, one serious omission to which we must call attention.

Want of "Notice" to accused clergyman.

The evil exists under the present system, and the Commissioners have not proposed any remedy. The Recommendations provide that any person may make any charge, to the Bishop, of misconduct or neglect of duty against any clergyman; and the Bishop may thereupon give leave to the complainant to proceed; and at the instance of the complainant, a citation to the clergyman may then issue out of the Diocesan Registry,

There are two serious objections to this procedure: (1.) It is contrary to the precept of St. Paul to Timothy, that he should not receive an accusation against a Presbyter except from *two* witnesses. (See also *Selvagg.* on this subject, lib. iii. tit. xii. c. 3.)

(2.) It is unfair to a clergyman that the Bishop should not afford him an opportunity of explaining, or contradicting, the accusation, before he is thrown into the Ecclesiastical Court. The complainant need not be a Churchman, or even a Christian. He need not be a parishioner, and may be a person of immoral life. It is true, that the Bishop may refuse consent, and that, without the Bishop's consent, the complainant cannot proceed; but after the Bishop's consent is once given, all his power ceases, and the complainant may commence, and carry on, proceedings in Court after Court, which possibly might have been proved wholly needless, had the Bishop, before "receiving" and acting upon the accusation, written to the accused clergyman and stated, that a complaint had been made, and that if he chose to offer any explanation, the Bishop would consider it before he allowed any citation to issue.

Some of the above remarks apply even more strongly to a case where the Bishop himself initiates proceedings because "scandal" or "evil report" exists. (See *Report*, p. lv.) The Bishop is to direct an inquiry, apparently behind the back of the clergyman whose character "rumour" is taking away. So that any day an Incumbent may find out that an inquiry has been held at the instance of the Bishop, and a report made against his character, without his ever having been heard, and without his having had the slightest opportunity of explanation, or contradiction. This is no rash statement.

In cases of heresy and breach of ritual, there ought also to be provision for notice to the clergyman *before citation*.

The provision in the Report that the Bishop may, *if both parties*

Letters of Request.

send cases direct to the Provincial Court (pp. lv. plies that he cannot do so unless the parties This is an improvement; as under the present practice, a clergy

It should be noticed, that the Commissioners do not discuss any ecclesiastical offences or immorality or heresy of the laity, but confine themselves to the clerical body, and that no proceedings can be taken against any clergyman without the Bishop's consent [s].

Cases of Misconduct, &c.

The Court of First Instance for cases of alleged misconduct and neglect of duty will be the Diocesan Court, consisting of the Bishop,—

"with whom shall sit, as legal assessor, the Chancellor or some other person learned in the law [t], at the discretion of the Bishop; except in cases where the Bishop shall call upon the Chancellor to hear the case alone [u]."

In certain other cases a Bishop-Suffragan, or the Chancellor, may act. The Bishop may (with consent of both parties) send the case direct to the Provincial Court. There will be an appeal to the Provincial Court, which will consist of the "Official-Principal."

The Official-Principal will have to take the oaths and make the declarations required by Canon 127, and will be confirmed by the Dean and Chapter of St. Paul's [x]; so that *some* of the objections pertaining to Lord Penzance will be for ever removed in the case of an Official-Principal under the new scheme.

Appeal to the Crown in cases of Misconduct, &c.

An appeal will lie from the Court of the Archbishop to the Crown, who shall appoint a permanent body of lay-judges "learned in the law." Five will be summoned for each case [y].

Letters of Request, be put in the Arches Court, instead of being heard in the Court of his own diocese,—a procedure which is contrary to the principles of both the Canon and Common Law. (*Rep.*, pp. xlvi., xlvii. See 4 Co. Inst., and p. 231, above.)

ntences by bishop, &c.

The provision that the Archbishop and Bishop are personally to pronounce sentences of deprivation, &c., is in accordance with the Canon Law (*Rep.*, p. lviii.), as those will find who study the ancient Common Law, or our own Canons of 1603.

, pp. liii., lv., lvii. This confirms *Julius v. Bishop of Oxford*, L. R as., p. 214. Several members of the Commission wished to take ishop's power of *veto*. See *Report*, pp. liv., lxii., &c.

it is not said *Ecclesiastical* Law.

iii.

[u] *Rep.*, p. lv.

[y] *Ibid.*, p. lvi.

"When on appeal to the Crown the judgment of the Church Court is to be varied, the cause shall be remitted to the Court, the judgment of which is appealed against, in order that justice may be done therein *according to the order of the Crown*[z]."

This is not a return of the case to the Archbishop's Court for reconsideration, but the Archbishop's Court will be bound to carry out the orders of the Final Court, and, if so ordered, to reverse its own previous decree!

Cases of heresy and ritual.

A somewhat different, and more elaborate, procedure is recommended by the Commissioners with respect to cases of heresy and breach of ritual. Their scheme is as follows[a]:—

Diocesan Court.

"The Diocesan Court shall consist of the Bishop, with whom shall sit a legal and a theological assessor. The legal assessor shall be the Chancellor of the diocese, or some other person learned in the law, at the discretion of the Bishop. The theological assessor shall be chosen *pro hâc vice* by the Bishop, with the advice of the Dean and Chapter, if there be any.

"In case of the inability of a Bishop to sit, he shall appoint one of his comprovincial Bishops to sit in his place. In the case of mental malady incapacitating the Bishop, the nomination shall rest with the Archbishop of the province, save in cases where a coadjutor Bishop shall have been appointed under the Act of 1869, in which cases the coadjutor shall have the same powers as the Bishop.

"The Bishop may, if he thinks proper, send a case direct to the Provincial Court, if both parties consent.

"An appeal shall lie from the Diocesan Court to the Court of the Province.

Provincial Court.

"When an appeal is made or a case is sent to the Provincial Court it shall be forwarded to the Archbishop in person, and he shall pronounce whether (*a*) he will leave it for the decision of his official principal, or (*b*) will hear it himself, assisted by his official principal as assessor; in which latter case the Archbishop may, if he think fit, appoint any number not exceeding five of theological assessors to sit with the Court.

"Every such theological assessor shall be a Bishop within the

[z] *Rep.*, p. lvi. [a] *Ibid.*, pp. lvii., lxviii.

province, or a professor past or present of one of the English Universities.

Appeals to the Crown.

"An appeal shall lie from the Court of the Archbishop to the Crown, and the Crown shall appoint a permanent body of lay Judges learned in the law, to whom such appeals shall be referred.

"Every person so appointed shall, before entering on his office, sign the following declaration:—I do hereby solemnly declare that I am a member of the Church of England as by law established.

"The number summoned for each case shall not be less than five, who shall be summoned by the Lord Chancellor in rotation.

"The Judges shall have the power of consulting the Archbishop and Bishops of the province, or, if thought advisable, of both provinces, in exactly the same form as the House of Lords now consults the Judges of the land upon specific questions put to them for their opinion; and

"Shall be bound so to consult them on the demand of any one or more of their number present at the hearing of the appeal.

"The Judges shall not be bound to state reasons for their decision; but if they do so, each Judge shall deliver his judgment separately as in the Supreme Court of Judicature, and the House of Lords; and

"The actual decree shall be alone of binding authority; the reasoning of the written or oral judgments shall always be allowed to be reconsidered and disputed [b].

"The Commissioners desire it to be understood that they regard the scheme embodied in the foregoing seven resolutions as to appeals to the Crown as a whole.

"When on appeal to the Crown the judgment of the Church Court is to be varied, the cause shall be remitted to the court, the judgment of which is appealed against, in order that justice may be done therein according to the order of the Crown."

Reservation of Sir R. Phillimore.

The Commissioners were by no means unanimous touching the recommendations with regard to the Court of Appeal. Sir R. Phillimore expressed himself as follows [c]:—

"I am unable to concur in those recommendations of the

[b] See Lord Penzance's remarks below, p. 250.

[c] *Rep.*, p. lxii.

report which suggest that there should be an appeal to the Crown, in other words, that lay judges should decide causes in the last resort, the practical effect of which would be to enable these lay judges to dictate to the Archbishop spiritual sentences which he would have, perhaps, contrary to his own judgment to pronounce.

"If, entertaining this opinion, it be my duty to say what would be, if not the best, the least objectionable solution of the difficulties which have always been inherent in this matter, and the fairest adjustment of the present relations of Church and State, I would suggest, that there should be no appeal in any spiritual cause beyond the Court of the Archbishop. At the same time, I would give the State the power to insist that there should be one or more trained assessors of legal experience and standing to assist in the administration of justice by that Court.

"If there is to be any such appeal it should be, in my judgment, subject to the safeguards and provisions suggested by Lord Devon.

"ROBERT PHILLIMORE."

Reservations of Lord Devon and others.

Lord Devon signed the Report with two reservations, the first advising that an appeal should only be allowed to the defendant, and the second, that a reference to the Bishops should be made in *all* cases of doctrine and ritual. The latter reservation was also signed by the Bishops of Winchester and Oxford, the Dean (Lake) of Durham, and Sir W. C. James[d].

Reservation of Mr. Freeman

Mr. E. A. Freeman objected to the restriction of the Court of Final Appeal to lawyers[e]:—

"I wish to state my dissent from the words which confine the hearing of appeals to the Crown to members of a single profession. I would leave it open to the Crown to appoint lawyers, Churchmen, or any other persons who may be thought competent, as was the case with the Court of Delegates under the statute of Henry the Eighth. I hold that the examination of questions of this kind constantly calls for knowledge of a special kind, the presence of which is by no means implied in the pro-

[d] *Rep.*, p. lxii. [e] *Ibid.*, p. lxiii.

fessional learning of the lawyer, and which is just as likely to be found in other persons, clerical or lay.

"EDWARD A. FREEMAN."

Separate Report of Lord Penzance.

Lord Penzance did not sign the Report, but presented one of his own, in which he expressed disagreement with some of the views stated or implied in the Report of his co-Commissioners, especially with respect to the Court of Appeal:—

Court of Appeal.

"I will only remark upon the recommendation in this part of the Report that in future 'The actual decree should be alone of binding authority, the reasoning of the written or oral judgments should always be allowed to be re-considered and disputed[f].'

"If this only means that what are known among lawyers as *obiter dicta*, are not to be held binding on future cases, I have nothing to say to it; these judicial utterances never, so far as I am aware, have been treated as anything but the expressed opinion of the individual judge upon points or matters not directly in question, and which did not arise for judgment in the particular case. But the language of the recommendation goes much further. It appears to me to propose that in future, in place of asking upon what principle was this or that case decided, the only question should be—did the court decide (in reference to the ascertained facts) for the promoter, or for the defendant, for that is all which the actual decree will show. Such a system, if adopted, would result in this, that no case would become a precedent for the decision of cases arising after it, except those in which every circumstance was identical. No legal principle would be asserted or established, no general interpretation of the terms and directions involved in the Rubrics of the Prayer-Book, or of the language in which the doctrine or the ceremonial of the Church has been expressed by lawful authority, could be arrived at or ascertained. Every fresh point, though in reality falling under a general category with which the court had previously dealt, would become necessarily the subject of a fresh suit to settle it, and until it was brought to adjudication no man would be able to tell what the law might be held to be. In a word, such a system, if acted upon for hal

[f] See p. 248, above.

a century, would destroy the ascertained law altogether; and had it been maintained in the temporal courts from early times, it is not too much to say that what is known as the common law of the land could have had no existence[g].

"All which matters I beg humbly to report and submit to your Majesty.

"PENZANCE."

Objections to the proposed Court of Appeal.

This proposed Court of Final Appeal is open to several very serious objections, which may briefly be stated as follows:—

Defect in learning.

(1.) No provision is made to secure any competent learning in Ecclesiastical Law among the judges. This absence of technical knowledge forms one of the objections to the Privy Council, and would not be remedied by the plan proposed by the Report. It is quite true, that the Judges would have power to consult the Archbishops and Bishops, in cases of doctrine and ritual, but they would not be bound to do so; and it is not improbable, that they would refrain to ask for assistance when some grave principle was at stake; and there is no reference whatever to the Bishops in cases of discipline or morality.

Defect in personal qualification.

(2.) No provision is made to secure that the Judges, though nominal Churchmen[h], should be "Communicants," or even "Church-goers," or to prevent men of known immoral life sitting as Judges. We may thus have the anomaly of a man who disbelieves Church doctrines *reversing* the decisions upon them of Bishops and Archbishops; or a man whose life is in open conflict, not merely with Church Discipline, but with God's laws of morality, adjudicating, and deciding what is the standard of morals for the clergy. It may be mentioned here, that moral life, as well as competent learning, is by the Canons of the Church of England, a necessary qualification for an Ecclesiastical judge; and it will be seen from the patents

[g] This quotation from Lord Penzance is given to show the difficulty, if not the impracticability, of the scheme of the Commissioners.

[h] *Rep.*, pp. lvi., lvii.

of the Deans of Arches down to, and including, that of Sir Robert Phillimore[i], this principle is recognised by the documents under which they held office.

Laity overriding Bishops.

(3.) The gross anomaly, that a tribunal solely composed of laymen should override Bishops and Archbishops, on Church questions of a spiritual character. Whether laymen had a share in the administration of Church Discipline in the Primitive Church, or not, it is quite clear from ecclesiastical history, that they had not the *chief share*, or the *supreme power*. Our services of 'Consecration of Bishops,' and 'Ordination of Priests,' indicate, that the government, or at least the chief government, is confided to those Church officers[k], and this not merely by the laws of the realm, but by God Himself.

No Spiritual jurisdiction.

(4.) Still more serious objections remain. Assume that secular judges will take the trouble to learn Ecclesiastical Law, and that judges will be appointed who are, in heart as well as in name, members of the Church of England, the Court of Final Appeal would have no more true spiritual jurisdiction than the Judicial Committee now has. It would have no commission from Christ or His Church, but simply from the secular authorities. It may be remembered that at the Consecration of a Bishop the Archbishop asks :—

"Will you . . . such as be unquiet, disobedient, and criminous within your own Diocese, correct and punish, according to

[i] *Rep.*, vol. ii. pp. 662, 663. Contrast the documents appointing Lord Penzance, *ib.*, pp. 663—665. See also Canon 127 of 1603, and *Rep.*, p. xxxvii., with the note thereto.

[k] As to exercise of judicial authority by deputies and "officials," see *Report*, pp. xix., xxxii., *ib.*, App. 26; the Canon (2) of Abp. Chicheley, (A.D. 1415), against employment of laymen given in *Lyndwood*, p. 129, and *ib.*, App. p. 69, and in *Johnson*, ii. 478. As to the powers of "officials," see Lyndwood, pp. 14, 80, 90, 104, 105, 129, 146, 158, 262. As to "official" of an Archbishop who is "Legatus natus," see *ib.* 277. As to Archdeacon's "officials," see *ib.* 53, 118. As to Vicars-General, see *ib.* 104. A general Commission given to an "Official Principal" does not give criminal jurisdiction, nor power to remove from or confer benefices, unless a special commission is given. *Lynd.*, 90, 104; *Gibson*, xxiii.; and *Law's Oughton*, 2nd ed., 16.

such authority as you have by God's word, and as to you shall be committed by the Ordinance of the realm?

"*Answer.* I will so do, by the help of God."

Compare the questions in the Ordination Service where the phrase "Discipline of Christ" is used. It will be seen that the Divine as well as the Human source of authority is recognised and accepted.

Law to be administered will not be Scripture or Church Law.

(5.) Also, the law administered by the Final Court would be the State Law, not the Church's Law. Its supreme law, would be Statute Law, the law of man, not Holy Scripture, which is the law of God. If Parliament said one thing, and the Bible another, the Court would have to obey Parliament, and disobey the Bible—a course which would be an open defiance of the principles of Revealed Truth. This follows, naturally, from their origin and the source of their jurisdiction:—

Whose image and superscription do they bear? Not Christ's, but Cæsar's.

Examples.

That we may understand better what would be the practical working of the Court, it will be well to take some examples, by way of illustration:—

(*a.*) Take first a simple case of alleged "misconduct and neglect of duty[l]" by a clergyman. He may be deprived, or suspended, by the Bishop in the Diocesan Court, this may be confirmed by the Provincial Court[m], and sentence pronounced by the Archbishop himself[n].

On appeal, the Final Court may reverse the sentence; and then the case will be remitted to the Church Court, "in order that justice may be done therein according to the order of the Crown[o]." So not only will the clergyman whom the Church has pronounced unfit to continue pastor of a parish be returned to teach, admonish, and administer the Sacraments of the Church; but the Church Court will be actually obliged to take act and part in restoring him.

It is curious that medical men, and army men, are al-

[l] *Rep.*, p. lv. [m] *Ibid.* [n] *Ibid.*, p. lviii. [o] *Ibid.*, p. lvi.

lowed to decide, in their own recognised tribunals what *is* professional misconduct; but the clergy are not.

(*b.*) It is clear, that if a clergyman refuses to solemnize the marriage of an "innocent" divorced person, while the husband or wife of such person is alive, or to give the Holy Communion to any person "merely" because he had married again while his divorced wife was living, and such clergyman were attacked for this, as "neglect of duty," and the Archbishop's Court had refused to make any order against the clergyman; the Court of Final Appeal would *compel* the Archbishop's Court to order the clergyman to solemnize the marriage of the "innocent" divorced person, and to give the Holy Communion to the "married" person[p]. If the clergyman refused, he would be deprived, and the Archbishop, personally, would have to deprive him[q].

(*c.*) If a clergyman repels from the Holy Communion a parishioner on account of some sin in which the parishioner is living, and he is upheld both by Bishop and Archbishop in their Courts, the decision may be reversed by the five Judges. Then the Archbishop may be *compelled* to order the clergyman to administer the Holy Communion to such parishioner, after he (the Archbishop) has first said he ought not to do so. And also the Archbishop may, if the clergyman still refuses, be compelled to deprive the clergyman for doing exactly what the Archbishop first says he is right in doing. It should be observed, that it has been held that a parishioner has (unless he is within certain exceptions) a *statutory*[r] right to the Holy Communion.

(*d.*) So far we have been dealing with English law as it is. But the differences between the laws of Church and State are likely to increase rather than to diminish. If the Deceased Wife's Sister Bill passes, a new crop of difficulties will arise.

[p] By 20 & 21 Vict. c. 85, persons divorced may re-marry as if their spouses were dead, but no clergyman is bound to solemnize the marriage of the *guilty* party. (See sects. 57, 58.)

[q] See *Rep.*, p. lviii.

[r] *Jenkins v. Cook*, L. R., 1 P. Div. 80.

(*e.*) The above cases are all of discipline, and not of heresy or ritual. So no reference to the Bishops would be made[s]. But even if a reference were possible in the cases of marriage law above mentioned, no reference would, in fact, take place. The Judges would decide on the meaning of the Divorce Act, or the Act legalising marriage with a deceased wife's sister, if such a statute were passed, and would not ask episcopal advice how to construe an Act of Parliament. In cases of doctrine, reference might be made to the Bishops, but the Judges are not, even in such cases, bound to refer to the Bishops; and, what is still more important, they are not bound to follow their advice when asked. So it will be seen, that this plan of reference to the Bishops creates another risk of arousing open conflict between Church and State.

In reply to some of the above considerations, it has been suggested, that, in a sufficiently important case, the Archbishop would refuse to carry out the decrees of the Final Court, and would resign. On this, of course, either another, and more pliant, Archbishop would be appointed; or else a conflict between Church and State would begin, in which a disruption of their union would, naturally, ensue. And in such a contest, the Church would be at this very serious disadvantage, that it had *agreed* to the establishment of this system of Courts, and would be open to the taunt, that it only kept the contract so long as it found it convenient to acquiesce in the system.

The result is, that it would be a great mistake for the Church to accept the scheme of the Commissioners *in its present shape.* For this would be to give a definite consent to Erastian legislation; and the establishment of real Church Courts as Courts of First Instance and Primary Appeal, would, under such circumstances, so far from alleviating the evil, increase it.

The true policy of the Church, therefore, is to 'wait in patience' a little while longer.

It may be, that the clouds, which seem at present to overhang the sky, will have passed away, perhaps, in

[s] See pp. 246, 248.

mercy, to be succeeded by better and brighter days! At least, the delay can do no damage, if we '*wait*,' until Ecclesiastical learning is better understood.

And to this desirable end the mass of information contained in this 'Report' will be a valuable assistance. Whether the delay is occasioned by the Church, or by pressure of business in Parliament, or the unwillingness of the Legislature to move in the matter, it will afford an opportunity for the Church herself, without recourse to Parliament, to endeavour to establish *voluntary* tribunals of her own, which would command respect, and, in most cases, if properly constituted and skilfully conducted, a willing obedience.

Moreover, the very experience gained, in this new field of Ecclesiastical Law, would be of infinite service, when her Courts, under the joint action of Church and State, can be based upon a *wider and more solid foundation!*

NOTE ON p. 29.

THE TOPIC IS TREATED MORE LARGELY, p. 223.

LORD PENZANCE, as one of the Commissioners appointed to inquire into the constitution and the working of the Ecclesiastical Courts, dealing with the question, said:—

"I come, therefore, to the conclusion, that there is no warrant to be found, in the legal or constitutional history of this country, for the proposition that there have existed at any time since the Conquest, or indeed before it, Spiritual Courts deriving their original authority from the Church independent of the Sovereign, or the State, and that the authority for the jurisdiction of the existing Ecclesiastical Courts did, on the contrary, emanate directly from the Crown. I do not offer any opinion whether it would, or would not be, an improvement if the Spiritual Courts had a more independent existence. I desire only to place on record their actual constitution and origin."—*Report*, p. lxv.

With all due respect for the important opinion which is given by Lord Penzance, perhaps I may be allowed to offer a few remarks, taking, first, the latter part of what is alleged, as being the most easy to deal with, in a reply. Indeed, the very fact of the proposition being expressed as to "whether it would, or would not be, an improvement, if the Spiritual Courts had a more independent existence," would be suggestive to many minds, that, after all, there is cause for *some* complaint, whatever the nature of the complaint may be.

Let me again repeat from a source which may not be received with the weight of a professional opinion, *ex cathedrâ*, nevertheless, it is worth something, because it shows the current of public opinion, to which we always attach importance in the present day; and possibly, the writer may be one who has given much attention to the study of Law.

The "Times," March 21, 1879, remarks: "If the suit of *Martin* v. *Mackonochie* has done nothing else, it will at least have effected an useful object in laying bare an extraordinary state of complication and confusion both in ecclesiastical law and the jurisdiction which administers it."

The above opinions certainly suggest a remedy for acknowledged evils. Let the Church's Courts have more independence in purely spiritual things, and administer the Church's law; and let the secular[a] appendages of land, money, &c., only be dealt with by the State.

With regard to the historical statements of Lord Penzance, it is only necessary to say, that his Report clashes with that of all the other Commissioners, who are, probably, as well versed in history as his Lordship.

It will be convenient to add here some of the historical statements of Mr. Bigelow, who has more than once been quoted in the course of this work, and who is a man of high reputation in America; and his opinions have the additional advantage of coming from an unbiassed quarter.

"King Stephen himself was summoned to answer before an Ecclesiastical Council for arresting and dismissing the bishops in the year 1139, and obeyed."—*Bigelow's History of Procedure in England*, p. 33.

[This is quoted only because remarkable, although very repugnant to our modern ideas.]

"The Ecclesiastical Court was a Court (a general term used for convenience) which had derived its authority and powers, in the main, *from the immemorial usage of the Church.* The chief object which it had in view was the enactment of laws for the promotion of the spiritual welfare of Christians generally, of rules for the administration of Church affairs by bishops and clergy, and for the discipline and conduct of the various orders of ecclesiastics. The nature of a Council which had undertaken business of this sort was unmistakable. Whether composed exclusively of ecclesiastics or not, it was an Ecclesiastical Court in the legitimate sense."—*Ibid.*, p. 25.

"These Courts shared largely in the administration of justice in the Norman period (as in the earliest times), especially in criminal causes."—*Ibid.*, p. 25.

"It was reserved for the Norman Kings to make direct way for the great jurisdiction of the royal tribunals, by systematic en-

[a] Peter Blesensis, writing on the Canon Law in the latter half of the twelfth century, says: "Nemo, militans Deo, implicat se negotiis secularibus. Unde non videtur quòd ecclesiasticus judex debeat cognoscere de causis secularibus; ut de dote, de successione, de testamentis," c. 10. But he adds that the bishop as judge might interfere "incidenter, et, ut generaliùs dicam, accessoriè," but not "principaliter."—*Bigelow's Hist. of Procedure*, p. 25.

croachment upon the jurisdictions of the popular and franchise courts; a fact, however, not fully manifested before the twelfth century."—*Bigelow's History of Procedure*, p. 75; see also *Freeman, Norm. Conq.*, 298, 299.

Again, the English Ecclesiastical Assemblies, in Norman as well as later times, may be divided into National, Provincial, and Diocesan.

"Two first rather alike . . . Diocesan of greater interest in matters of litigation. These were the County Courts and Burgmotes of the Church . . . and are the original of what since the last half of the twelfth century have been known as the 'Court Christian,' *Curia Christianitatis*, the Ecclesiastical Court." —*Bigelow's History of Procedure*, p. 28.

[See *Petrus Blesensis*, c. 16, quoted in Bigelow, p. 33, note; *see also ib.* pp. 49, 51.]

"As an auxiliary to the secular Courts, the Ecclesiastical Court (of the bishop or archdeacon especially) must, within its proper jurisdiction, have been of the greatest service.

"Without it, provincial administration of justice, at least, must have been very defective. It was a Court of 'Equity' to remedy such difficulties as have been noticed, arising from the rules of evidence in the lay-courts; but if a suggestion is justified from the turbulence of the Norman period, the power and haughtiness of the rich, and their frequent defiance of the law—enforced by the chief ground for the exercise of chancery jurisdiction in the early history of the Court of Chancery—the Ecclesiastical Court may have served the purpose of a Court of Equity in other respects certainly not less important."—*Bigelow's History of Procedure*, pp. 71, 2.

"The jurisdiction of spiritual causes had doubtless always pertained exclusively to the clergy; or rather, the clergy doubtless always had the right to exclude the laity from the judgment of spiritual causes. As matter of fact, they did not usually exercise their jurisdiction over spiritual matters of general interest without the aid, or at least the presence, of the lay-baronage. The King often, if not generally, sat in, and perhaps sometimes presided over, the Church Synods. This was certainly true when ecclesiastical questions were brought into the King's Court for determination, a matter of not unusual occurrence [see note in *Bigelow*, p. 29]; whether the King possessed any legal voice in the deliberations of the synod, apart from the

permission which was probably always accorded him, may doubted; and the doubt is still stronger concerning the right of the laity to vote."—*Bigelow*, p. 29; see also p. 33, and conf. Stillingfleet, vol. iii., *Foundation of Ecclesiastical Jurisdiction, &c.* See e.g., in *Bigelow's Appendix*, "Cartæ et Placita."

Plaid et transaction en présence de Hen. I., en 1126 *et* 1127 :—

"Debats judiciaire au sujet d'un différend porté en la Cour du Roi, par les religieux de Marmoutier contra Jean évêque de Siez pour l'investiture de quelques églises situées dans le territoire de Belesme, qui n'est remarkquable que par le nombre de témoins présens a cet acte. Il se termine ainsi: Actum in præsentiâ domini Henrici regis Anglorum apud sanctam Gaubergem prope Rothomagum et ab episcopo ipso Sagiensi domno Johanne concessum." Names are given below [b].

"Quant à la transaction qui eut lieu entre les parties au sujet du procès ci-dessus, elle n'offre d'autre particularité qu'une note historique jointe à la signature du roi Henry, qui est elle-même renfermée dans un orbe ou un cercle dentelée."—*Bigelow, Append.*, p. 366.

"Though the higher English clergy had been supplanted by Normans before the end of the eleventh century, there is no reason to suppose that ecclesiastical procedure in Normandy differed from that in England. It had the same origin, and was mainly under the same influence."—*Bigelow*, p. 61.

"The early jurisdiction of the Chancery was more frequently exercised in favour of the poor and weak against the rich and powerful than in any other way."—*Ibid.*, p. 72, note.

[It should be remembered that the Chancery jurisdiction to a great extent originated from the Church's influence and law.]

"The clergy continued to sit in the Secular Courts throughout the Norman period. The Conqueror's Charter of jurisdiction did not require the clergy to cease attendance upon the lay-courts. In point of fact, they appear to have attended more numerously after the Conqueror's law than before [c]."—*Ibid.*, p. 72.

[b] "Præsentibus istis Gaufrido Rothomagensi archiepiscopo, Eudo et Bernardo episcopis, Gaufrido regis cancellario, Galeranno archidiacono, Roberto de Sigillo, de laicis, Roberto de Haia, Grimaldo medico, Roberto de Dangu, Roberto de Chandos, Rogero fratre ejus, Hugone de Braitello, &c. De nostris (Douge témoins). De clericis (Sept. témoins). De famulis (Quatre témoins) et pluribus aliis."—*Cart. de la Basse-Norm*, p. 84; *Arch. d'Alençon*, Nos. 8, 9.

[c] See *Placita Ang.-Norm.*, 2, 4, 23, 36, 69, 78, 100, 113, 133, 136, 176.

APPENDIX A.

(Page 128.)

The Churchmen are not few who will agree with Lord Balfour in his opinion, and not less so, if they examine the character of some of the Legislation passed for the purpose of aiding the efforts of the Church.

Amongst the curiosities of literature, perhaps some legal inquirer, in the course of his studies, might be disposed to include as remarkable phenomena, the 'curiosities' of Ecclesiastical Legislation. A non-professional man would not presume to say one word upon other branches of National Law, which under all circumstances, and at all times, may be everything which lucidity can require, with the help of ordinary intelligence.

The examples herewith selected of "Acts relating to Building Churches and to Cemeteries or Churchyards," &c., were passed during the reigns of George III. and his immediate successor. No doubt, the subject of church-building, long neglected after Queen Anne's time (when some little national effort was made), began to excite the attention of the Legislature — probably owing to a rising consciousness that the provision of spiritual means had failed to overtake the gradual increase of population, notwithstanding all the wars and other causes which tended to check that increase. Some previous enactments had been made.

But in 58 Geo. III. ch. 45, we have the following[a]:—

"An Act for building and promoting the building of additional churches in populous parishes."—30th May, 1818.

The title appears plain enough, whatever may be the particulars comprised in the Act.

But in 59 Geo. III. ch. 134, i.e. in a little more than twelve months, 13th July, 1819, we have the preceding Act amended and enlarged in the following terms:—

"An Act to amend and render more effectual an Act passed in the last Session of Parliament for building and promoting the building of additional churches in populous parishes."

But again, as if to show us the non-infallibility of all human

[a] Previously to these the Acts were 43 Geo. III. c. 108, and 51 Geo. III. c. 115.

legislation, especially when taken out of the sphere of simple secular legislation, some four years after the preceding Act of the Legislature, we actually have the correction of the above for their amendment, and greater efficiency :—

3 Geo. IV. ch. 72 :—

"An Act to amend and render more effectual two Acts passed, in the 58th and 59th years of His late Majesty, for building and promoting the building of additional churches in populous parishes."—22nd July, 1822.

One is not bold enough to say, that there was no necessity for such corrections and additions, only, that all such-like legislation, which cannot stand in its original form for more than some three or four years without such corrections and additions, is, and must be, a hindrance to the Church, in a very important element of her life and usefulness!

But what shall we say to the following, passed only three years after the preceding, probably as trying to the patience of the Legislature as to the applicants themselves?

5 Geo. IV. ch. 103 :—

"An Act to make further provision, and to amend and render more effectual, *three Acts* passed in the 58th and 59th years of His late Majesty, and in the third year of His present Majesty, for building and promoting the building of additional churches in populous parishes."—24th June, 1824.

And yet again, as if this were not sufficient that an enactment should be made which should supply the defects of three preceding Acts, we have, some three years after, another enactment, with a shorter title, 7 and 8 Geo. IV. ch. 72 :—

"An Act to amend the Acts for building and promoting the building of additional churches in populous parishes;" the precise words used in describing the Act, already alluded to, and passed nine years before, May 30, 1818.

But if it be alleged, that frequent reference to Parliament is needful because of the connection subsisting between Church and State, and because the State is not only the ostensible, but the Legal Guardian of all Funds belonging to the Church, the reply is, that the State is bound to see, by virtue of that connection, that such funds of which she is the legal guardian and trustee, are wisely and justly dispensed. But then, What do we say to the following enactment which appears to embrace not simply the funds under trust, but where voluntary efforts and

individual self-sacrifice are incurred, for the benefit and development of the Church?

The Act, following the one previously quoted, comes in the subsequent year.

9 Geo. IV. ch. 42 :—

"An Act to abolish church-briefs, and to provide for the better collection and application of voluntary contributions for the purpose of enlarging and building churches and chapels."—15th July, 1828.

Surely, each individual subject in the kingdom likes to have the free control over what he does in acts of charity. Is it unreasonable to ask, Why should not the same principle be conceded when Churchmen, for the Church, are willing to deny themselves? At least, we may remark, all such kinds of legislation (be it observed, not necessarily emanating from Churchmen) *must have* a tendency to check the liberality of the religious and benevolent, and cripple freedom of action, when every effort is needed for the development of what Christ Himself has founded and bequeathed!

I have collected the examples before us as the most convenient for our purpose, because, in part, away from the more immediate history of our own times. But other periods could be selected with the same facility, and are equally cogent upon the point to which Lord Balfour alludes; and those who are wishful to prosecute the inquiry farther had best look into the Statutes themselves, and compare them in their several details. But failing this, possibly such publications as Hodgson and Trower on the building, and the law of building, of churches, will suffice. I regret that I cannot find one particular enactment, though it has been in my hands,—an enactment which no legal investigator has ever construed, and which, it is believed, will prove equally unintelligible to posterity; though perhaps this may be a benefit, and not a damage, to the Church!

Mr. Trower, in his above-mentioned work, remarks[b] :—

"If there be one portion of our law more than another of which it is just to speak in terms of indignant reproach, it is that which consists of the Church Building Acts."

"I need not comment," says one Judge, "upon their obscurity; that is a matter of public notoriety; and of them the Act 19 and 20 Vict. c. 104, is entitled to pre-eminence for ob-

[b] Preface, p. vii.

scurity and difficulty of construction" (says Dr. Lushington in *Gough* v. *Jones*, 11 W. R. 108). And again, "it has been no easy task to discover the meaning of the Local Act" (then under construction), *but that Act is light itself* compared with the obscurity of the Church Building Statutes (per Dr. Lushington, *Varty* v. *Nunn*, 2 Curt. 893). And Vice-Chancellor Kindersley has characterized them as "ill-drawn and obscure and extremely difficult to assign a meaning to, presenting a labyrinth of ambiguity, rendering it difficult in the last degree to discover the intention; no less than twenty-five Acts having been passed on this single branch of law alone, in the last forty-five years." (*Tuckness* v. *Alexander*, 2 N. R. 480.)

The whole mass of the Church Building and New Parishes Acts we need not particularize further.

The simplest 'Act' of all would be to encourage the study of Ecclesiastical Law, that thereby the *Church herself* might be enabled, with a proper recognition of such liberty, to do a little more legislation for herself.

APPENDIX B.

(Note, p. 242.)

One of the points referred to in the note is deserving of a little further consideration. It has been sometimes said, though the statement is not always true, that one of our national characteristics is, that in our public policy we are continually rocking between two extremes, either towards indifference on the one side, or impetuousness on the other. No doubt it is good to be earnest in a right cause, and again, "Whatsoever thine hand findeth to do, do it with all thy might."

Still, if the tendency of the sudden strain is, eventually, to cause a person or a nation to fall the more easily into the contrary habit of mind, the question may be, whether, in the long run, a calmer judgment may not be the more desirable, because more lasting in its effects. Probably, if the principle suggested had been the main feature in the public condemnation of alcohol, other matters of importance might have been thought of, as associated with the subject of strong drink.

Of course, in one way, the Christian cannot be too vehement against the crying evil, as alike abhorrent to his faith, and degrading to the man or woman; and especially so since amid the drunkenness of European nations, at one time, we, in Great Britain, took rank as '*third*' for the unenviable notoriety. But then, in the laudable attempt to retrieve ourselves from the pit into which we had fallen, partly through climate, partly through faulty legislation, and partly from the long habit which had incrusted itself into our very existence as a people[a], nevertheless, whether we speak of the studious at home, or the outdoor labourer in his toil, the individual must have *something* wherewith to quench his thirst. No doubt, without using a single Christian argument, we learn even from a heathen Poet that 'water is the best.'

But then, the heathen did not mean, neither should the

[a] Green says of the English before their arrival in England, "They were hard drinkers no doubt, as they were hard toilers; and the 'ale-feast' was the centre of their social life."—(*Hist.*, vol. i. p. 16.)

Christian, that we must use the water under the circumstances, whether wholesome, or otherwise. So that the question really takes this shape, Which is better? poisoned water? (and this we are not yet free from either in town or country) or adulterated drink?

Again, no one who is anxious to see the cultivation of sobriety, among all classes, will question the propriety of wearing a distinctive badge, if people so determine. It may prove a reminder to the wearer, whatever the colour of the ribbon may be; or, as a fact which is equally probable, by shewing it to others, it may be suggestive to the passing spectator. Like the colour of a regiment, it becomes a kind of rallying point, in time of danger, for the unsteady, or the doubtful, in their loyalty!

But then, on the other hand, we are to count the risk that the sign is liable to, in its changeableness and decay, and so will require renewal from time to time. This may be a small matter; but even the most strenuous advocate for the system will admit *the* fact.

But then, to the Christian is this the only weapon for self-defence? Without going to St. Paul for our authority, we can come still nearer to our own day, when we examine the lives and mark the high tone of professing Christians after the Apostles' time. As covering the whole period of human life, and with a shield to keep off the shafts of the threefold enemy of man, St. Chrysostom tells us "We fortify ourselves," i.e. we, as baptized Christians, "fortify ourselves *with the sign of the cross*." This may be superstition. And so, in a measure, it has been regarded.

But this is not the question: since, for that matter, the ribbon of the abstainer is really a sign of superstition. For it has not, and it cannot have, any *virtue in itself*. And if harmless, so is the sign of the cross. But if the ribbon can keep a man or a woman straight in the pathway of sobriety, why not the sign of the cross[b], the most sacred motto of the Chris-

[b] Canon 30. i. "It is to be observed, that although the Jews and Ethnics derided both the Apostles and the rest of the Christians for preaching and believing in Him who was crucified upon the Cross; yet all, both Apostles and Christians, were so far from being discouraged from their profession by the ignominy of the Cross, as they rather rejoiced and triumphed in it. . . ."

ii. "The honour and dignity of the name of the Cross begat a reverend estimation even in the Apostles' times (for aught that is known to the con-

tian's faith, and which requires *no renewal?* Indeed St. Paul himself tells us, as being associated with the highest work of God for man, it *cannot be renewed.* Once, and once for all, the cross is the emblem of man's fresh relationship with God, it is the surety of his redemption, once already achieved for the salvation of the soul, to be perfected, when the time comes, for the glorious redemption of the body! But the two together are but one as the outcome of the single Act *upon the Cross!*

There remains but one other point, which may require a little consideration; because the subject is sometimes damaged by rash and unwise statements. And possibly, in answer to inquirers, this may be the explanation why, during the late agitation, so many clergymen, equally alive to all the evils, have kept themselves aloof.

We have alluded to unfortunate legislation, and to the abso-

trary) of the sign of the Cross which the Christians shortly *after used in all their actions*, thereby making an outward show and profession, even to the astonishment of the Jews, that they were not ashamed to acknowledge Him for their Lord and Saviour, who died for them upon the Cross," &c., &c.

iii. "It must be confessed, that in process of time the sign of the Cross was greatly abused in the Church of Rome, especially after that corruption of Popery had once possessed it. But the *abuse of a thing doth not take away the lawful use of it*," *&c., &c.—Constitutions and Canons Ecclesiastical*, 1603.

In the early Church we find that the greatest importance was attached to the use of the Cross. Cp. St. Jerom. Ep. 113; Præfet. in Job, tom. iii. "Ego Christianus, et de parentibus Christianis natus, et *vexillum crucis portans.*" St. Cyprian also, Ep. 50: "Muniatur frons, ut Signum Dei incolume servetur."

Again, St. Chrysostom thus speaks,—

Καὶ γὰρ ὁ σταυρὸς δι' ἡμᾶς, τὸ τῆς ἀφάτου φιλανθρωπίας ἔργον, τὸ τῆς πόλλης κηδεμονίας σύμβολον.—*In Epist. ad Rom. Hom.* ii. p. 445.

But the earlier writer Tertullian speaks still more strongly upon the point; in fact, if we may so express ourselves, he covers the whole life of a Christian in the use, or remembrance, of it.

"Ad omnem progressum atque promotum, ad omnem aditum et exitum, ad vestitum, ad calceatum, ad lavacra, ad mensas, ad lumina, ad cubilia, ad sedilia, quæcumque nos conversatio exercet, frontem crucis signaculo terimus."—*Tertull. de Coron. Mil.*, cap. 2. See also *Epist. Barnabas*, c. 11; *Cypr. Test. Contr. Jud.*, lib. ii. s. 21; *Method. Hom. on the Cross and Passion.*

For Lyndwood's views as to reverence or "adoration" of the Cross, see *Lynd.*, 252; and with respect to the Festival, "Invention of the Cross," *ib.*, 102; and his explanation of the signification of the four limbs of the cross, *ib.*, 7.

lute necessity of improved sanitary conditions; but in addition, there appeared some little time ago in a Yorkshire newspaper an account of a public meeting, from which I will only extract what is necessary to prove my point.

The speaker, carried away, no doubt, by his feelings, rather than influenced by his sober judgment, "went extremely far" (so is the report given) "in the cause of total abstinence." He declared, that "if his wife were dying, and the doctors said brandy would save her, he should not let her have it." In the strictness of old Roman law, the husband would unquestionably have the power. But then, as the sequel, the husband, as a Christian, has never told us what was to be done, in case the critical conditions should be his own!

Happily, for the sake of society, the mass of people, and abstainers amongst them, think very differently—all, in short, who have had much experience in medical, parochial, or hospital, life.

Let me take the two following examples, bearing on such a case as the one alluded to: one, where total abstinence was *rigidly* observed; the other, where it was not so. Again, the one is borrowed from domestic, the other from hospital, life. I believe both statements are correct, though the particulars of one I can vouch for as literally accurate.

At a mansion in our own country, it so happened, that the Lady of the establishment had a serious illness, and suddenly (for these conditions often come upon us suddenly, i.e. when not expecting them) alarming symptoms showed themselves, which caused the doctor to be summoned without delay. He perceiving at once the dangerous state of his patient, ordered *brandy to be administered.* But, alas! there was no brandy to be found in the house, and none could be obtained except from a neighbouring village, which was not near enough for the alarming occasion. The result was, a member of the family, as was very natural, offered to all around *a large sum of money*, if so be that a single bottle of brandy could be procured. But this was fruitless. The patient died.

Now I do not affirm that the death was caused because the brandy was not given. But this much one may safely venture to assert, that any hope, which the medical attendant entertained, could not be met, because one instrument of hope had been, unadvisedly, cut off!

The other case is of a different type. A clergyman was one day driving from his home to a distant part in the country, and when a few miles on his way, he perceived a little knot of people, unusual at such a spot; but he very soon discovered the cause on seeing a poor man lying by the road-side, writhing in the intensity of his pain. Standing a little way off was a waggon, laden with corn for the mill or market, and drawn by three spirited horses. The latter had been frightened, and galloping wildly along, the driver, in his attempt to stop them, had been thrown down, the result being, that the waggon, with its heavy contents, had gone over, and smashed, the carter's leg. The first thing to be done, under the circumstances, was to bind up the broken parts as carefully and as closely as the sufferer could bear the pressure. The next thing was, the clergyman found in his pocket a solitary half-crown, he ordering that the same should be turned into brandy at an adjoining 'public.' A gate was wrenched off the hinges, on which the patient was carried to the railway-station. And, providentially we may say, as the bearers were proceeding on their way, the curling smoke of an approaching train was seen; and stopping for a few minutes the train carried off the sufferer, with an attendant, to the nearest hospital.

Now mark the sequel. The clergyman went in early next morning, but only expecting to hear that the poor man was dead. On entering the hospital, the first person he met with was the resident Surgeon of the Institution, and from him was the information derived, that the patient was not dead, although only just alive. On the assurance of this, the next question was but natural under the circumstances, viz. as to what was the condition of the patient when he entered the hospital? "What do you mean?" was the rejoinder of the medical officer. The question was, really, "Had too much brandy been administered during the interval of the accident and the conveyance to the infirmary?"

"By no means," was the reply. "The fact was, the patient was sinking fast for the want of the stimulant; and we were compelled to 'pour' in more, at once, in order to try to save the life."

Without going further into details, the issue of the case was, after lying, as the man was bidden to do, in one position for weeks together—docile, patient, and obedient—with a consti-

tution naturally robust, and in no ways injured by excess of any kind, a remarkable cure was effected. And on emerging from the hospital, one of his very first acts was, to find his way to the home of the donor of the half-crown, which had helped, in one way, through God's blessing, to save the life—a life spared to the present day!

Now, if there be any truth in the statement, that one fact is better than many arguments, we can safely allege, that an instance like the above is more than enough to answer any casual assertion, when it is made before a general audience, without considering the point in question in all its bearings. The fear is, lest the best of causes should suffer harm from intemperate advocacy!

Should any one desire to prosecute the inquiry, with the following details before him, he will probably arrive at the conclusion, that, from the very beginning, the Church raised her voice against this grievous sin. And for that reason, in later times, should the comparison be instituted by the inquirer between Ecclesiastical Law and Secular Law, pure and simple, with regard to the question, the former, whilst it had, uncrippled, its own share of influence, will compare favourably with the latter.

As far back as the Apostolical Constitutions, we can extract the following from lib. ii. 24:—

Τοῦτον τὸν Σωτῆρα, βασιλέα, καὶ Θεὸν ἡμῶν Ἰησοῦν, ὦ ἐπίσκοποι, σκοπὸν ἔχειν δεῖ, τούτου μιμητὰς εἶναι . . . μὴ οἰνόφλυγας, μὴ μεθύσους, &c.—*Id.* v. x. Can. 44, lib. viii., is a remarkable one, and addressed both to Laity and Clergy, the whole being upon the subject of *drink*. But there is added this special testimony on the question of *total abstinence*, a matter which has agitated the public mind, even to the present day:—

Τοῦτο δε φαμὲν, οὐχ ἵνα μη πίνωσιν· ἄλλως γὰρ καὶ ἔστιν ὑβρίσαι τὸ ὑπὸ Θεοῦ γενόμενον εἰς εὐφροσύνην· ἀλλὰ ἵνα μὴ παροινῶσιν· οὐ γὰρ ἔστιν ἡ γραφὴ, μὴ πίνειν οἶνον, ἀλλὰ τί φῆσιν; Μὴ πίνε οἶνον εἰς μεθὴν, &c. . . . Τοῦτο δὲ οὐ περὶ τῶν ἐν κλήρῳ φαμὲν, ἀλλὰ καὶ περὶ παντος λαϊαοῦ Χριστιανοῦ, ἐφ' ὃν τὸ ὄνυμα τοῦ Κυρίου ἡμῶς Ἰησοῦ Χριστοῦ ἐπικέκληται.

We must remember, however, that these directions were given rather to *Eastern* Christians, and before the sin had developed so grievously, in subsequent times, along with Christian civilization, westward, and towards the north-west.

But notwithstanding the above, as inclusive both of Laity

and Clergy, it is evident, as we proceed with the history of the subject, that Canons, rules, or admonitions, are given more especially to the clergy, and for two reasons: (i.) because of the peculiar *sacredness of their office*, and (ii.) in order that, through the force of their own good example, their teaching also might have the more effect upon the minds of others. Hence, looking at the first point, that act was considered the most heinous of all, which shewed itself at the very time of ministerial service.

We read, again, in these said Apostolical Constitutions, that relief was never to be extended to drunkards; neither were their 'oblations' to be accepted. And drunkenness was made, without hesitation, a ground of exclusion from the Holy Communion. Canons were promulged from various Ecclesiastical Councils from A.D. 461 down to 570, which we need only allude to as showing how keenly alive the Church had been, all this time, upon what was considered, even then, a great social question.

But to come to ourselves, the English Canons indicate how strongly the vice had laid hold of us as a people, and even of the clergy. Archbishop Theodore, towards the end of the seventh century, decrees that an habitual drunkard, who is a bishop, or other ordained person, must amend, or be deposed. The Council of "Bergamhamsted," A.D. 696, orders, that a Priest who is too drunk to say his 'office' may be removed or suspended from the ministry by the Bishop. (*Johnson*, i. 145.) Again, Gildas, about A.D. 560, says, any one who cannot, through drunkenness, say the Psalms may be excommunicated. (For some of the above see *Smith's Dictionary of Christian Antiquities.*)

In No. 14 of the Excerptions of Ecbright, A.D. 740, we have the following: "That none who is numbered among the Priests cherish the vice of drunkenness, nor force others by his importunity."

No. 18, *ib.* 253, "That no Priest go to eat or drink in *taverns*." (See *Johnson*, i. 187.)

By No 21, of Cuthbert's Canons at Clovesho (A.D. 747), we have, as a decree, the following: that Monastics and Ecclesiastics are forbidden the vice of drunkenness 'as deadly poison.' Unless compelled by infirmity, they were not "to help themselves or others to drink, till the canonical, i.e. the ninth hour, be fully come." *Ib.* 253.

Once more, by No. 41 of the laws of the Northumbrian

Priests (*circ.* A D. 950), "If a Priest indulge in drunkenness . . . let him make satisfaction."

No. 57 of the Canons made in King Edgar's reign (A.D. 960), "And that Priests guard themselves from over-drinking, and teach *the same to other men.*" In the form of Confession in the Penitential Canons, about A.D. 963, we find a conjunction of the two evils mentioned, "I confess intemperance in eating and drinking," &c. (*Johnson*, 429.) So among penances we find abstinence from intoxicants. (See *Johnson*, 442, 447.)

From Theodulf's Capitula, which seem to have been introduced here *circ.* A.D. 994, we make the subjoined extract: "And it very greatly concerns every mass-priest to guard himself against drunkenness, and that he teach this to the people under him." The Canon proceeds to forbid the priests to visit ale-houses, &c., and promiscuous visiting: but they may accept entertainment from "a worthy father of a family," *ib.* 459.

The following curious Canon is also in Theodulf's Capitula, *ib.* 478: "Further, we command all mass-priests, who are willing to sing mass before high-mass, either on Sundays or other mass-days, that they do it secretly, so as that they may draw no part of the people from high-mass; for it is a very evil custom which some men practise both on Sundays and other mass-days, so that they will hear mass early in the morning, and then presently, all the day after, serve their own belly, not God, by drunkenness and junketing." . . . "And we charge the men of every rank to frequent the high-mass."

Not to omit a high authority on all points of Ecclesiastical law, Lyndwood (p. 119) has a very strong note against this particular sin, speaking of the drunken man as '*one out of his mind*,' and therefore not to be condemned, 'if he speaks words amounting to heresy.'

By a Canon in the Decretals of Gregory (lib. iii. tit. i. c. 18), *De vitâ et honestate*, attributed to Innocent III., in concilio generali (Lateran.), a drunken clergyman, after admonition, is declared liable to suspension. To show the care which the Church exercised, in these early times, we may add, not only was drunkenness forbidden *per se*, but as if she would guard *against the very temptation*, "the occupations of musician and glee-man, and the haunting of taverns, is likewise prohibited to the clergy in these early English Canons."

After these details, the question may be fairly asked, Did the

Church, by means of all these precautions, *succeed* in eradicating the tremendous evil complained of? We must acknowledge, whether or not, the Church was, certainly, *a witness* against such things; and it would be just as reasonable to ask, whether, in addition to all that was attempted previously, Secular Legislation has been more successful in these later times?

At all events, for the last three centuries and more, when Secular Legislation has had its share, if not more than its due share, of power, the subject has, from time to time, challenged the attention of Parliament. It may be, this effort was never continuous; and temporary expedients will do little towards removing a sore, which some have thought, and perhaps not altogether without reason, *is now eating into the very heart of our national life.* Without going too far back, and scanning the whole range of beer-bills, &c., in our Parliamentary legislation, suppose we take two periods of our history, viz. before, and after, the epoch of the 'Reformation.' At all events, one thing will probably be found: the Reformation, which produced so many salutary changes, did little in elevating the moral tone of the population, *so far as sobriety was concerned.* Here, as in other points of history, Legislation is the best guide. It not only speaks the mind of a people, but reveals their own standard of right and wrong; the very language in which the law is embodied, helping us in drawing our conclusions.

In the reign of Henry VII. (A.D. 1495) appears a Statute, not remarkable in any way, except for its brevity, and the precautions taken as a check upon the growing evil.

11 Henry VII. c. 2; 19 Henry VII. c. 12:—

"And that it be lawfull to two of the Justices of the Peace, whereof one shall be of the quorum, within their authority, to reject and put away common ale-selling in townes and places where they shall think convenient, and to take surety of the keepers of ale-houses of their good behaviour by the discretion of the said Justices, and in the same to be advised and agreed at the time of their Sessions." But which last, some one hundred and twenty-eight years subsequently, was repealed in 21 James I., cap. 28. And the repeal was made, because, probably, after the interval of time, the wording of the enactment was not felt strong enough to meet the evil, as it developed amongst the people. And yet here we must not forget that, in the Canons of 1603, the Church *once more* made an attempt to

use her authority in the matter. But all she did, or was allowed to do, was to place drunkards in the same category with other notorious offenders, making them each and all liable to be '*presented*,' and prosecuted in the Ecclesiastical Courts.

The Parliament, therefore, was once more constrained to act, and the reign of James I. is somewhat remarkable for the passing of several Statutes affecting the question, viz. 1 Jac. I. c. 9 (A.D. 1603), 4 Jac. I. c. 5 (A.D. 1606), 21 Jac. I. c. 28 (A.D. 1623), 7 Jac. I. c. 10 (A.D. 1609), 21 Jac. I. c. 7 (A.D. 1623), reaching on to 1 Charles I. c. 4 (A.D. 1625), and 13 Charles II. c. 9 (A.D. 1661); which last was passed, simply and solely, for the purpose *of repressing the vice* amongst "every person and persons in his Majesty's pay, and who shall be punished . . . as the Court-martial shall think fit."

Now what distinguished the foregoing Statutes of James I. was not their number only, but because of the special distinctness of the terms employed, with regard to the use of these places of resort, and the required legal supervision. On the other hand, we are forcibly reminded by these self-same Acts of the necessity of legislation, *on moral grounds*, designating drunkenness as "*an odious and loathsome sin.*" Or if it can be described in still more forcible terms, in that it is "*an inordinate and extreme vice*," or one (7 Jac. I. c. 10) which "*doth more and more abound*," "to the *great offence of Almighty God*, and the wonderful *destruction of God's good creatures*," for the appeal is made to a people on the highest ground of duty, whether as men, or as Christians! What stronger reasons could be given for the exercise of every precaution? The only question is, what effect had these reasons at the time? or rather, what were the results as we trace them downward, in succeeding generations?

There is, however, one other point which ought not to be omitted in the survey of these later Statutes; and perhaps, at first sight, this may appear a mere trifle after the grave reasons alleged. And yet the same is of importance in one of the Statutes of King James (1 Jac. I. c. 9), because it will meet us again, indirectly, some two centuries later, when the subject is afresh discussed in the British Paliament. The provision is, that Inns are meant, not "for the entertainment of lewd and idle people," it being enacted, that "any Innkeeper, &c., suffering persons *to continue drinking*,—other *than as invited by travellers*, or labouring men *for one hour at dinner*, or of labourers lodging

there, or for necessary occasions to be allowed by two Justices, shall be punished." This being one of the very points which came under discussion in the two Houses of Parliament on the introduction of the Beer-Bill in 1830[c], or thereabouts, one party steadily maintaining, that the beer should be drunk *off* the premises, and they were right; whilst the other took an opposite view, thus altering the character of the enactment for the worse, to the damage of public morality. It would seem, at least, that the Legislature had learnt nothing by the experience and teaching of previous centuries!

But meanwhile, How spake the Public Conscience? What effect had *this* upon the proceedings of Parliament?

Like everything else connected with the question, this has a history of its own, leaving some marks behind it. A cause of public agitation, at one time, lay in the existence of our *Excise Laws!*

[c] The Bill was introduced into the House of Commons by Mr. Calcraft, May 5, he saying: "That the object of the Government, of the Committee, and of himself, as Chairman of that Committee, had been merely to provide that a better beverage should be provided for the subordinate ranks of society." . . . "By whatever means that object was to be effected, still, that, and that alone, was the object they had in view."

In the course of the discussion, Sir E. Knatchbull (June 23, 1830) wished to introduce some amendments, after the first reading had been passed in the House by a large majority; and one of the proposed amendments was on the first clause "to prohibit the drinking *on* the premises where it was sold."

I will offer here but three more quotations; and these shall be given as reflecting the different phases of the discussion.

Mr. Benett is reported to have said: "The supposition that more beer would be drunk if the number of beer-houses should be increased, was groundless. There was not more meat eaters where there was an increase of butchers'-shops." . . . "As to the argument about immorality, there was nothing immoral in drinking of beer," (a laugh).

But Mr. C. Calvert said: "The Bill was of a most oppressive nature, and would half ruin the publicans in London and in the country. He would propose to alter the title of the Bill, and call it a Bill 'for promoting drunkenness and immorality.'"

On the other side, again, it may be interesting to quote what fell from Mr. Brougham (afterwards Lord Brougham) touching the points which came under debate: "After they had now arrived at the beginning of July (July 2, 1830), after having debated more questions than at any former period, after having heard more speeches, and more speakers of all kinds" (laughter), "this (beer-bill) was, in fact, almost the only solitary measure they had passed during the whole of the long, busy, and unusually laborious, session." (Hear.) How little, then, must have been done for the benefit of the Nation! that little being the beer-bill!

I am not going to state that any of the evils complained of have resulted from these. One thing, however, is to be observed, they were passed at a pressing time of our National history, and they became the cause[d] of much bitterness of political feeling; so that, eventually, a doubt arose, whether it was right, or wrong, that the Publick Exchequer should derive so considerable an item of its income from such a source.

There is a traditional opinion handed down as given by the eminent Statesman, Sir Robert Peel, that, should the Nation will it, he was ready to modify, or sweep them away, *provided that* some other substitute could be suggested. But, if true, the question was not answered then; neither has the challenge been accepted since then, amid the fervour of public feeling elicited at public meetings, when the grave question has been discussed by multitudes of every shade of political and religious opinion.

At all events, it may be reasonably doubted, whether the present position of the question is satisfactory. Will the Legislature wait till a sufficient pressure is brought to bear upon its proceedings—an 'ugly rush' as Mr. Henley once described such a pressure? Or will the Legislature have the courage of its own opinions, and repeal, or modify, where mistakes have been manifestly committed?

[d] "Walpole's next financial measure was the famous '*Excise scheme*.' The 'excise' duties, first levied in the Civil Wars, and continued, but curtailed at the 'Restoration,' were progressively increased during the stormy reigns of William and Anne. The chief articles subject to them were salt, malt, and the distilleries."—*Lord Mahon's Hist. of Engl.*, 1733.

At the proposed measure, as framed by Sir R. Walpole, the Opposition took alarm. Mr. Pulteney pathetically exclaimed, when the Sinking Fund was discussed, relative to the scheme: "But, Sir, there is another thing, a very terrible affair impending! A monster project! yes, more monstrous than has ever yet been represented! It is such a project as has struck terror into the minds of most gentlemen within this House, and of all men without doors!" . . . "I mean, Sir, that monster the Excise! That plan of arbitrary power which is expected to be laid before the House in the present Session!" "The most alarming rumours existed." "A general Excise is coming!" was the cry, "a tax on all articles of consumption, a burden to grind the country to powder, a plot to overthrow the ancient Constitution, and establish in its place a hateful tyranny!"—Vol. ii. c. xvi. p. 243.

As a curious fact, we may add, the word '*Excise*' is explained in Dr. Johnson's Dict., ed. publ. 1755, as "a hateful tax levied upon commodities, and adjudged not by common judges of property, but by wretches hired by those to whom Excise is paid."

It is a moral question of the highest importance, and it is a religious question. At least, former Parliaments have declared it to be such, when, as Christians, they made a loud appeal, in the name of the Deity Himself. The Church has spoken out, over and over again, as a keeper of the records of God, till she could speak no longer. And yet this is scarcely correct; for when the Beer Bill was being discussed in the Upper House of Parliament, true to his high religious principles, and loyal to his Church, *one Bishop* raised his voice, in condemnation of the measure. But then, in a House crowded with members for the occasion, what was *one* amongst so many? As representing the Church, that voice was lost amid the excitement; and in the results it was not more effective than a whisper in a storm!

Not to say more, a doubt may be raised whether, in the consideration *of this single question*, the tendency of our modern Legislations[e], *per se*, has been conducive to the interests *of morality and religion!*

[e] At all events, one is not aware that the Church has ever placed *temptations* before the unwary or inconsiderate. Can this be said with equal truth of our modern Secular Legislation, i.e. if we bear in mind the 'Beer Act,' the 'Grocer's Licence Act,' gin-palaces, &c.?

Another proof we have in the very legislation that has been forced upon the Legislature to correct the original evils, as they developed. At first, the Excise, and the Excise only, had the granting of the Licences under the Beer Act, the power of the magistrates being confined to the licensing of public-houses. But subsequently, the magistracy had the power conceded to them over the licensing of beer as well as over public-houses. Only, it may be added, the sum paid for the licence was less for the former than the latter privilege.

But now, as another change and a corrective, the whole business has been placed under *police regulations*. And the police are authorised to see, when a licence is granted, that to be drunk 'on' or 'off' the premises, is particularised on the sign-board. The very changes, therefore, that have been called for show the unwisdom and rashness of the original legislation!

Will the next policy be marked by the Church being again invited to give her salutary help upon so grave a question?

All that we have arrived at so far is, according to the "Daily Telegraph," March, 1884, "That the National Drink-bill has still a mournful position in modern statistics." And the evil is not confined to Protestant countries. According to statistics, Belgium, notwithstanding her national industry and advanced education, occupies a very prominent place, proving, moreover, the fact so much discussed in our own House of Commons, that, when the Law sanctions the increase of drinking-places, there is, in proportion, an increase of national drunkenness.

It may be conceded, that the issues of a later legislation have been to bring the licensing of public-houses under much stricter regulations, and in some measure that legislation has endeavoured to remedy the laxity of the past, because of the necessity. But had the voice of the Clergy upon this subject been heeded, the disease would never have reached the height to which it has attained amongst the masses of our population; and the remedy would have been applied all the sooner!

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